TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 894.

LEWIS H. HYDE, APPELLANT,

vs.

THE CONTINENTAL TRUST COMPANY OF THE CITY OF NEW YORK ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED JANUARY 28, 1895.

(15,778.)

(15,778.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 894.

LEWIS H. HYDE, APPELLANT,

vs.

THE CONTINENTAL TRUST COMPANY OF THE CITY OF NEW YORK, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

INDEX.

	Original.	Print.
Caption	1	1
Bill of complaint	2	1
Exhibit A—Letter of Lewis H. Hyde to trustees of the Continental Trust Co., January 5, 1895	17	9
Demurrer of the Continental Trust Co. to bill	19	10
Demurrer of Wm. Alexander Smith *et al.* to bill	22	12
Notice of hearing	27	14
Final decree	29	15
Order allowing appeal	30	15
Assignment of errors	32	16
Bond on appeal	35	17
Clerk's certificate	38	18

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JANUARY 28, 1895.

1 In the Circuit Court of the United States, Southern District of New York.

LEWIS H. HYDE, Complainant,
versus
THE CONTINENTAL TRUST COMPANY OF THE CITY OF New York, William Alexander Smith, W. Seward Webb, Richard B. Hartshorne, Robert Olyphant, Alfred M. Hoyt, John C. Havemeyer, Walter Jennings, Otto T. Bannard, Gordon Norrie, William Jay, James C. Parrish, Robert S. Holt, Henry M. Taber, Giraud Foster, A. Lanfear Norrie, Oliver Harriman, Jr., William F. Cochran, Gordon Macdonald, Robert W. de Forest, and William A. Hazard, Defendants. } In Equity.

Bill of Complaint.

Seward, Guthrie, Morawetz & Steele, solicitors for complainant, 29 Nassau street, N. Y.

Joseph H. Choate, Clarence A. Seward, William D. Guthrie, Charles Steele, David Willcox, of counsel.

U. S. circuit court. Filed Jan. 11, 1895. John A. Shields, clerk.

2 To the judges of the circuit court of the United States for the southern district of New York, sitting in equity:

Lewis H. Hyde, a citizen of the State of New Jersey, and a resident of the city of Orange, in said State, brings this his bill of complaint, in behalf of himself and all other stockholders who are similarly situated, and who shall be entitled to avail themselves of the benefit of this suit, against the Continental Trust Company of the City of New York, a corporation created and existing under and by virtue of the laws of the State of New York, located and having its principal office for the transaction of business in the city of New York, in the southern district of New York; William Alexander Smith, W. Seward Webb, Richard B. Hartshorne, Robert Olyphant, Alfred M. Hoyt, John C. Havemeyer, Walter Jennings, Otto T. Bannard, Gordon Norrie, William Jay, James C. Parrish, Robert S. Holt, Henry M. Taber, Giraud Foster, A. Lanfear Norrie, Oliver Harriman, Jr., William F. Cochran, Gordon Macdonald and Robert W. de Forest, all citizens of the State of New York and residents of the southern district of said State, and William A. Hazard, a citizen of the State of New York and a resident of the eastern district of said State; and thereupon your orator complains and says as follows:

First. Your orator shows that the defendant, The Continental Trust Company of the City of New York, is a corporation
3 duly organized and existing under and by virtue of the laws of the State of New York, and a citizen of said State.

The capital stock of said corporation now consists, and for over two years last past has consisted, of the sum of five hundred thousand dollars ($500,000), divided into five thousand shares of the par value of one hundred dollars ($100) each; and, as your orator is informed and verily believes, the capital stock, surplus and accumulated profits of said corporation now exceed the sum of eight hundred and fifty thousand dollars ($850,000).

Second. Your orator further shows that the said defendant trust company was and is required by the laws of the State of New York to invest its capital in real estate securities, or in the stocks of the United States or of the State of New York, or in the stocks and bonds of incorporated cities and counties of the said State; that the said trust company was and is authorized and empowered by said laws to act as fiscal or transfer agent of any State, municipality, body corporate or corporation; to receive money and securities on deposit; to hold and convey all real estate necessary to the transaction of its business; to act as trustee under any mortgage or bond issued by any municipality, body politic or corporation, and accept and execute any other municipal or corporate trust not inconsistent with the laws of the State of New York; to act as trustee for married women; to act under the order of any court of record as guardian, receiver, or trustee for minors, and as depositary of moneys; to take, accept and execute any and all such trusts and powers, of whatever nature and description, as might be conferred upon or intrusted or committed to said company by any person or persons, or any body politic, corporation or other authority, by grant, assignment,
4 transfer, devise, bequest or otherwise, or which might be intrusted or committed or transferred to or vested in said company by order of the supreme court or any court of record, or any surrogate, and to receive and take and hold any property or estate, real or personal, which might be the subject of any such trust; to buy and sell securities, and to act as executor under wills, as administrator of the estate of any deceased person, and as the committee of the estates of insane persons; and that the trustees of said trust company were and are authorized by the said laws to invest the moneys received by them in trust in public stocks of the United States, or of any individual State, or in the bonds or stocks of any incorporated city or county of this State.

Third. Your orator further shows, on information and belief, that the property and assets of said defendant trust company now amount to more than the sum of eight hundred and fifty thousand dollars ($850,000) as aforesaid, and that over $25,000 thereof is invested in real estate owned by said company in fee, and at least $200,000 thereof in bonds of the city of New York.

Fourth. Your orator further shows that the net profits or income of the defendant trust company during the year ending December 31st, 1894, amounted, to the best of your orator's knowledge, information and belief, to more than the sum of one hundred thousand dollars ($100,000) above its actual operating and business expenses, including losses and interest on bonded and other indebtedness.

Fifth. Your orator further shows, on information and belief, that

under and by virtue of the powers conferred upon said de-
5 fendant trust company, it has from time to time taken, accepted and executed, and at all the times referred to in this bill of complaint, has held and been executing, and still holds and is executing, numerous trusts committed to said trust company by numerous persons, copartnerships, unincorporated associations and corporations, by grant, assignment, devise and bequest, and by orders of various courts, and that said trust company now holds as trustee sundry parcels of real estate for many minors, individuals, copartnerships, associations and corporations too numerous to mention, resident in the United States and elsewhere.

Sixth. Your orator further shows that under and by virtue of the laws of the State of New York in such case made and provided, and the charter and by-laws of said trust company, it is, among other things, provided that its stock, property, affairs and concerns should be managed and wholly conducted by twenty-one trustees, that such trustees should hold office until others were chosen in their stead, and that such trustees should be stockholders of the company in their own right. As your orator is informed and verily believes, the defendants above named, William Alexander Smith, W. Seward Webb, Richard B. Hartshorne, Robert Olyphant, Alfred M. Hoyt, John C. Havemeyer, Walter Jennings, Otto T. Bannard, Gordon Norrie, William Jay, James C. Parrish, Robert S. Holt, Henry M. Taber, Giraud Foster, A. Lanfear Norrie, Oliver Harriman, Jr., William F. Cochran, Gordon Macdonald and Robert W. de Forest, are all citizens of the State of New York and residents and inhabitants of the southern district of said State, and William A. Hazard
6 is a citizen of the State of New York and a resident and inhabitant of the eastern district of said State; and said defendants are the trustees of the said defendant trust company, duly elected as such, and are now acting in that capacity and managing and conducting all and singular the stock, property, affairs and concerns of said defendant trust company.

Seventh. Your orator further shows that he is a citizen of the State of New Jersey and resident of the city of Orange, in said State; that he became the owner and registered holder of five shares of the capital stock in said defendant trust company on or about the 15th day of February, 1893, and that he ever since has been and still is a stockholder therein, owning and holding in his own right said five shares of its capital stock. The capital stock of said trust company is divided among a large number of different persons, who as such stockholders constitute a large body, and this suit is for an object common to them all. Your orator, therefore, brings this suit in his own name and in his own behalf as a stockholder in said trust company, and also as a representative and on behalf of such of the other stockholders similarly situated and interested as may choose to intervene and become parties hereto.

Eighth. Your orator further shows that, as he is informed and verily believes, the defendant trust company and a majority of its trustees who are managing and conducting its stocks, property, affairs and concerns as aforesaid, claim and assert that under and

by virtue of the alleged authority of the provisions of an act of Congress of the United States entitled "An act to reduce taxation, to provide revenue for the Government, and for other purposes," passed August 15th, 1894, the trust company is liable and
7 that they intend to pay to the Federal Government before the first day of July, 1895, a tax of two per centum on the net profits or income of said defendant trust company for the calendar year ending December 31st, 1894, above actual operating and business expenses, including the income derived from the said real estate and the said bonds of the city of New York; and that said trustees claim and assert that a similar tax must be paid upon the amount of the income, gains and profits in excess of four thousand dollars of all minors and others for whom the said trust company is acting in a fiduciary capacity.

Ninth. Your orator further shows that, as he is informed and verily believes, in alleged compliance with the requirements of the act of Congress aforesaid, the defendant trust company and its said trustees have avowed their intention and propose voluntarily to make and file with the collector of internal revenue of the second district of the city of New York, prior to the 1st day of March, 1895, a list, return, or statement showing the amount of net profits or income received by said trust company during the calendar year 1894, as aforesaid, and have likewise avowed their intention and propose voluntarily to make and render a list or return to the said collector of internal revenue, prior to said date, of the amount of the income, gains and profits of all minors and other persons having incomes in excess of three thousand five hundred dollars for whom the said trust company is acting in a fiduciary capacity.

Tenth. Your orator avers that the provisions of said income tax, incorporated in said act of Congress, as aforesaid, are unconstitutional, null and void in that the said income tax is a direct tax in respect of the real estate held and owned by the defendant
8 trust company in its own right and in its fiduciary capacities as aforesaid, by being imposed upon the rents, issues and profits of said real estate, and is likewise a direct tax in respect of its personal property and the personal property held by it for others for whom it acts in its fiduciary capacities aforesaid, which direct taxes are not in and by said act apportioned among the several States, as required by section 2 of article I of the Constitution of the United States.

Eleventh. Your orator further avers that if the said income tax so incorporated in said act of Congress, as aforesaid, be held not to be a direct tax, then its provisions are nevertheless unconstitutional, null and void in that they are not uniform throughout the United States, as required in and by section 8 of article I of the Constitution of the United States.

Twelfth. Your orator further avers that the said income tax is not uniform as to property, class or subject in that, as he is informed and verily believes, the net profits or income above actual operating and business expenses of many corporations in the United States too numerous to mention, organized under the laws of the various States,

amount to less than four thousand dollars per annum, and did not equal said sum during the whole of the last calendar year, namely, 1894, and that said tax is imposed on such corporations, although individuals carrying on and transacting similar business, under like conditions and having like property, values, quantities and income, are exempted by said act from the payment of said tax.

Your orator further avers that the said income tax is not uniform in that, as he is informed and verily believes, numerous holders of said shares of stock in the defendant trust company and other corporations have annual incomes of less than $4,000, including the interest and dividends received upon shares therein, and during said calendar year actually received gains, profits and income amounting in the aggregate to less than $4,000, and that if the defendant trust company and other corporations shall pay the said tax to the collector of internal revenue as aforesaid, the effect of such payment will be to lessen and diminish the dividends of such shareholders, and to lessen and diminish the value of their shares, and compel such holders having incomes less than $4,000 per annum to bear and pay said tax, although other parties of the same class similarly situated in the United States, whose incomes are less than $4,000 per annum, received or resulting from investments in other property of like values and quantity, are exempted by said act from the payment of said tax.

Your orator further avers that the said income tax is not uniform in that, as he is informed and verily believes, it is imposed upon only about two per centum of the population of the United States, namely, those who have incomes in excess of $4,000 per annum, and that the remaining population, namely, ninety-eight per centum thereof, are by said act exempted from the payment of said tax, although they hold the greater portion of all property, real and personal, in the United States, as will appear by reference to the reports and returns of the Superintendent of Census of the United States duly made and published under the provisions of the Revised Statutes of the United States in such case made and provided.

Your orator further avers that the said income tax is not uniform in that it imposes a tax of two per centum upon all money and the value of all personal property acquired by gift or inheritance, while no similar tax is imposed by said act upon real estate of like values and quantities acquired under similar conditions by either gift or inheritance.

Your orator further avers that the said income tax is not uniform in that the principal of every estate consisting of personal property which passes by gift or inheritance to any person or persons during the pendency of said act is taxed at the rate of two per centum upon the amount of such principal, although other like estates which do not pass by gift or inheritance until after such limited period, or which during said period pass by gift or inheritance to corporations, are not so taxed.

Your orator further avers that the said income tax is not uniform in that it is not laid at the same rate or percentage upon all incomes derived from like property values, and quantities, but varies ac-

cording as the property, real or personal, from which the incomes, gains and profits are derived belongs to an individual, or to more than one individual, or to members of one family.

Your orator further avers that the said income tax is not uniform in that by its provisions the salaries due to State, county or municipal officers are exempted from the payment of the income tax; all corporations or associations for charitable, religious, educational or beneficial purposes, and all building and loan associations which loan to their shareholders only, and very many insurance companies and savings institutions, as therein specified, are exempted from the payment of the income tax; and the income from bonds of the United States, the principal and interest of which are by the law of their issuance exempt from Federal taxation, is also exempted from the payment of said income tax.

And your orator further avers that the said income tax is
11 not uniform as required by section 8 of article I of the Constitution of the United States in many other respects, besides those specifically mentioned in this bill of complaint, and that its provisions are, therefore, unconstitutional, null and void.

Thirteenth. Your orator further avers that the said provisions of said income tax, incorporated in said act of Congress as aforesaid, are likewise unconstitutional, null and void in that they impose a tax upon income not taxable under the Constitution of the United States and likewise income derived from the stocks and bonds of the States of the United States of America and counties and municipalities therein, which stocks and bonds are among the means and instrumentalities employed for carrying on their respective governments, and are not proper subjects of the taxing power of Congress, and which States and their counties and municipalities are independent of the General Government of the United States and the respective stocks or bonds of which are, together with the power of the States to borrow in any form, exempt from Federal taxation.

Your orator further shows that, as he is informed and verily believes, the stocks and bonds of the States and municipalities of the United States which are thus exempted from Federal taxation under the Constitution of the United States, amount in the aggregate to about the sum of $1,243,268,000, on which the income, interest or charge amounts to over the sum of $65,541,000 per annum, as likewise will appear by reference to said reports and returns of the Superintendent of Census, and that it was the intention of Congress and is essential and necessary to accomplish the purposes and general scope of said legislation to lay and collect said tax upon income derived from State, county and municipal stocks and bonds.

12 Fourteenth. Your orator further avers that the provisions of said income tax, incorporated in said act of Congress as aforesaid, are null and void in that they impair property rights vested prior to the passage of said act, and in that they impose a tax of two per centum upon incomes of persons, associations and corporations which accrued prior to August 28th, 1894, the date upon which said act became a law, as well as upon property received by gift or inheritance prior to said date.

Fifteenth. Your orator further avers that the provisions of said income tax, incorporated in said act of Congress as aforesaid, are unconstitutional, null and void in that all persons or corporations thereby taxed may, under and by virtue of its terms and provisions, be deprived of their property without due process of law in violation of article V of the Constitution of the United States.

Sixteenth. Your orator further avers that the provisions of said income tax, incorporated in said act of Congress as aforesaid, are unconstitutional, null and void, in that all persons or corporations thereby taxed may be compelled to produce and disclose their private books and papers in order to make them liable for a penalty or to forfeit their property, in violation of articles IV and V of the Constitution of the United States.

Seventeenth. Your orator further shows that this suit is not a collusive one to confer on a court of the United States jurisdiction of a case of which it would not otherwise have cognizance, and that he has duly requested the defendant trust company and its trustees and each of them in writing to omit and refuse to pay and to refrain from paying said income tax, and to contest the constitution-
13 ality of said act, and to refrain from voluntarily making lists, returns and statements on its own behalf and on behalf of the minors and other persons for whom it is acting in its fiduciary capacities aforesaid, and to apply to a court of competent jurisdiction to determine its liability under said act, and that a copy of said request is hereto annexed as "Exhibit A" and made a part of this complaint; but that said defendant trust company and a majority of its trustees after a meeting of the trustees, at which the matter and said request, "Exhibit A," were formally laid before them for action, have, as your orator is informed and verily believes, refused and still refuse and intend to neglect to comply with your orator's demand, and, as your orator is informed and verily believes, have resolved and determined and intend to comply with all and singular the provisions of said acts of Congress aud to pay said tax upon all its net profits or income as aforesaid, including therein its rents from real estate and its income from municipal bonds, on the ground that refusal to obey the said law would subject it to litigation with the United States, and that failure to pay said income tax would cloud the title to all and singular its real estate.

Eighteenth. Your orator further shows that if the defendant and its trustees, as they propose and have declared their intention to do, pay said tax out of the gains, income and profits of the defendant trust company, or out of the gains, income and profits of the property held by it in its fiduciary capacities, they will thereby diminish the assets of said trust company and lessen the dividends thereon and the value of all its shares.

Nineteenth. Your orator further shows that the voluntary
14 compliance with the provisions of said income tax, so incorporated in said act of Congress aforesaid, will expose the defendant trust company to a multiplicity of suits, not only by and on behalf of its numerous shareholders, but by and on behalf of numerous minors and other persons for whom it acts in its several

fiduciary capacities, and that such numerous suits will work irreparable injury to the business of the company and involve it in great and irreparable damage, and subject the trust company to liability to the beneficiaries aforesaid—all to the irreparable damage of your orator and all its shareholders.

Twentieth. Your orator further shows that this is a suit of a civil nature in equity; that the matter in dispute exceeds, exclusive of interest and costs, the sum or value of two thousand dollars and arises under the Constitution or laws of the United States, and that this is furthermore a controversy between citizens of different States.

All of which actings, doings and pretenses of the said defendants are contrary to equity and good conscience, and tend to the manifest wrong, injury and oppression of your orator in the premises.

Wherefore, and in consideration whereof, and forasmuch as your orator is remediless in the premises, at and by the strict rules of the common law, and is relievable only in a court of equity, where matters of this nature are properly cognizable and relievable:

Your orator prays:

I. That it may be adjudged and decreed that the said provisions known as the income tax incorporated in said act of Congress passed August 15th, 1894, are unconstitutional, null and void.

15 II. That the defendants be restrained from voluntarily complying with the provisions of said act and making the lists, returns and statements above referred to or paying the tax aforesaid.

III. And that your orator may have such other or further or different relief in the premises as to a court of equity may seem meet.

To the end, therefore, that the said defendants may, if they can, show why your orator should not have the relief herein and hereby prayed, and may full, true, direct and perfect answer make to the best and utmost of their knowledge, remembrance, information and belief, the said Continental Trust Company of the City of New York, under its corporate seal and the said individual defendants not under oath—an answer under oath being hereby expressly waived—to each and all of the matters and things in this bill of complaint contained, and that as fully and particularly as if the same were here repeated, paragraph by paragraph, and they were specially interrogated thereunto: may it please your honors to grant unto your orator a *subpœna ad respondendum* issuing out of and under the seal of this honorable court, to be directed to the said defendants, The Continental Trust Company of the City of New York, William Alexander Smith, W. Seward Webb, Richard B. Hartshorne, Robert Olyphant, Alfred M. Hoyt, John C. Havemeyer, Walter Jennings, Otto T. Bannard, Gordon Norrie, William Jay, James C. Parrish, Robert S. Holt, Henry M. Taber, Giraud Foster, A. Lanfear Norrie, Oliver Harriman, Jr., William F. Cochran, Gordon Macdonald, Robert W. de Forest and William A. Hazard, commanding them and each of them on a certain day and under a certain

16 penalty to be therein inserted, to appear before your honors in this honorable court, and then and there full, true, direct

and perfect answer make to all and singular the premises; and, further, to stand, do, perform and abide by such further order and decree as to your honors shall seem meet; and also a writ of provisional and a writ of perpetual injunction to the same purport, tenor and effect as is hereinbefore set forth and prayed.

And your orator, as in duty bound, will ever pray, &c.

SEWARD, GUTHRIE, MORAWETZ & STEELE,
Solicitors for Complainant.

JOSEPH H. CHOATE,
CLARENCE A. SEWARD,
WILLIAM D. GUTHRIE,
CHARLES STEELE,
DAVID WILLCOX,
Of Counsel.

UNITED STATES OF AMERICA, *Southern District of New York*, } ss.:

Lewis H. Hyde, being duly sworn, doth depose and say that he is the complainant named in the foregoing bill of complaint; that he has read the same and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters, he believes it to be true.

LEWIS H. HYDE.

Subscribed and sworn to before me this 11th day of January, A. D. 1895.

[NOTARIAL SEAL.]

CARL A. DE GERSDORFF,
Notary Public, New York County (99).

17

EXHIBIT A.

NEW YORK, *January* 5, 1895.

To William Alexander Smith, W. Seward Webb, Richard B. Hartshorne, Robert Olyphant, Alfred M. Hoyt, John C. Havemeyer, Walter Jennings, Otto T. Bannard, Gordon Norrie, William Jay, James C. Parrish, Robert S. Holt, Henry M. Taber, Giraud Foster, A. Lanfear Norrie, Oliver Harriman, Jr., William F. Cochran, Gordon Macdonald, Robert W. de Forest, and William A. Hazard, trustees of the Continental Trust Company of the City of New York.

SIRS: I am a shareholder in the Continental Trust Company of the City of New York, and am informed that the company intends to voluntarily comply with the requirements of the provisions relating to income tax contained in the act of Congress of the United States, entitled "An act to reduce taxation, and to provide revenue for the Government, and for other purposes," which became a law August 26th, 1894, and is known as the tariff act.

I claim that the provisions of said act of Congress in respect to income tax are unconstitutional. As a shareholder in said trust company I hereby protest against any action of the company and its trustees in voluntarily complying with said income tax provisions, and I request that said trust company and its trustees shall refrain from voluntarily complying with any of said provisions,
and from voluntarily paying the tax provided for therein,
18 and from voluntarily making lists, returns and statements
in its own behalf and in behalf of minors and other persons for whom it is acting in a fiduciary capacity. I further request that said company and its directors shall contest the constitutionality of said act and protect its shareholders and beneficiaries, and apply to a court of competent jurisdiction to determine its liability under the same, or take such steps as may be necessary to protect the rights of the trust company's shareholders and those for whom it acts in its numerous fiduciary capacities.

Very truly yours, LEWIS H. HYDE.

19 In the Circuit Court of the United States, Southern District of New York.

LEWIS H. HYDE, Complainant,
vs.
THE CONTINENTAL TRUST COMPANY OF THE CITY OF NEW YORK and Others, Defendants.

The Demurrer of The Continental Trust Company of the City of New York to Complainant's Bill of Complaint Herein.

This defendant, by protestation, not confessing or acknowledging all or any of the matters or things in the said bill of complaint contained to be true in such manner and form as the same are therein set forth and alleged, doth demur to the said bill and for cause of demurrer showeth that the said bill doth not contain any matter of equity whereon this court can ground any decree or give to the complainant any relief against this defendant, and that it appeareth by the complainant's own showing by the said bill that he is not entitled to the relief prayed by the bill against this defendant.

Wherefore, and for divers other good causes of demurrer appearing on the said bill, this defendant doth demur thereto, and it prays the judgment of this honorable court whether it shall be compelled
to make any answer to said bill, and it humbly prays to be
20 hence dismissed with its reasonable costs in this behalf sustained.

JAY & CANDLER,
Solicitors for Defendant The Continental Trust Company of the City of New York.

I, William C. Gulliver, of counsel for the defendant The Continental Trust Company of the City of New York in the above cause, do hereby certify that the foregoing demurrer to the bill of complaint is, in my opinion, well founded in law.

WM. C. GULLIVER.

UNITED STATES OF AMERICA, *Southern District of New York*, } ss:

I, Gordon Macdonald, being duly sworn, depose and say that I am the vice-president of The Continental Trust Company of the City of New York, one of the defendants above named, and that the foregoing demurrer is not interposed for purposes of delay.

GORDON MACDONALD.

Subscribed and sworn to before me this 19th day of January, 1895.

CLINTON E. BRAINE,
Notary Public, Kings County.

[SEAL.]

Certificate filed in N. Y. county.

21 [Endorsed:] Circuit court of the United States, southern district of New York. Lewis H. Hyde, complainant, against The Continental Trust Company of the City of New York. Copy. Demurrer of the Continental Trust Company of the City of New York to the complainant's bill of complaint herein. Jay & Candler, solicitors for the defendant The Continental Trust Company of the City of New York. Office and P. O. address, No. 48 Wall street, New York city, N. Y. Due and timely service of a copy of the within demurrer is hereby admitted this 19th day of January, 1895. Seward, Guthrie, Morawetz & Steele, solicitors for complainant. U. S. circuit court. Filed Jan. 19, 1895. John A. Shields, clerk.

22 In the Circuit Court of the United States, Southern District of New York.

LEWIS H. HYDE, Complainant,
vs.
THE CONTINENTAL TRUST COMPANY OF THE CITY OF NEW YORK, William Alexander Smith, W. Seward Webb, Richard B. Hartshorne, Robert Olyphant, Alfred M. Hoyt, John C. Havemeyer, Walter Jennings, Otto T. Bannard, Gordon Norrie, William Jay, James C. Parrish, Robert S. Holt, Henry M. Taber, Giraud Foster, A. Lanfear Norrie, Oliver Harriman, Jr., William F. Cochran, Gordon Macdonald, Robert W. De Forest, and William A. Hazard, Defendants.

The demurrer of William Alexander Smith, W. Seward Webb, Richard B. Hartshorne, Robert Olyphant, Alfred M. Hoyt, John C. Havemeyer, Walter Jennings, Otto T. Bannard, Gordon Norrie, William Jay, James C. Parrish, Robert S. Holt, Henry M. Taber, Giraud Foster, A. Lanfear Norrie, Oliver Harriman, Jr., William F. Cochran, Gordon Macdonald, Robert W. De Forest, and William A. Hazard to complainant's bill of complaint herein.

These defendants, by protestation, not confessing or acknowledging all or any of the matters or things in the said bill of complaint contained to be true in such manner and form as the same are therein set forth and alleged, do demur to the said bill and for cause of demurrer show that the said bill doth not contain any
23 matter of equity whereon this court can ground any decree or give to the complain-t any relief against these defendants, and that it appeareth by the complainant's own showing by the said bill that he is not entitled to the relief prayed by the bill against these defendants.

Wherefore, and for divers other good causes of demurrer appearing on the said bill, these defendants do demur thereto, and they pray the judgment of this honorable court whether they shall be compelled to make any answer to said bill, and they humbly pray to be hence dismissed with their reasonable costs in this behalf sustained.

JAY & CANDLER,
Solicitors for the Defendants, William Alexander Smith, W. Seward Webb, Richard B. Hartshorne, Robert Olyphant, Alfred M. Hoyt, John C. Havemeyer, Walter Jennings, Otto T. Bannard, Gordon Norrie, William Jay, James C. Parrish, Robert S. Holt, Henry M. Taber, Giraud Foster, A. Lanfear Norrie, Oliver Harriman, Jr., William F. Cochran, Gordon Macdonald, Robert W. De Forest, and William A. Hazard, 48 Wall Street, New York City.

I, William C. Gulliver, of counsel for the defendants, William Alexander Smith, W. Seward Webb, Richard B. Hartshorne, Robert Olyphant, Alfred M. Hoyt, John C. Havemeyer, Walter Jennings,

Otto T. Bannard, Gordon Norrie, William Jay, James C. Parrish, Robert S. Holt, Henry M. Taber, Giraud Foster, A. Lanfear Norrie, Oliver Harriman, Jr., William F. Cochran, Gordon Macdonald, Robert W. De Forest, and William A. Hazard, in the above
21 cause, do hereby certify that the foregoing demurrer to the bill of complaint is, in my opinion, well founded in law.

WM. C. GULLIVER.

UNITED STATES OF AMERICA, *Southern District of New York,* } ss:

William Alexander Smith, Robert Olyphant, Alfred M. Hoyt, John C. Havemeyer, Walter Jennings, Otto T. Bannard, Gordon Norrie, William Jay, James C. Parrish, Robert S. Holt, Henry M. Taber, Giraud Foster, A. Lanfear Norrie, Gordon Macdonald, Robert W. de Forest, and William A. Hazard, being severally duly sworn, each for himself deposes and says:

I am one of the defendants above named. The foregoing demurrer is not interposed for purposes of delay.

WM. ALEX. SMITH.
ROBERT OLYPHANT.
ALFRED. M. HOYT.
JOHN C. HAVEMEYER.
WALTER JENNINGS.
OTTO T. BANNARD.
WILLIAM JAY.
G. NORRIE.
JAMES C. PARRISH.
ROBERT HOLT.
HENRY M. TABER.
GIRAUD FOSTER.
A. LANFEAR NORRIE.
GORDON MACDONALD.
ROBERT W. DE FOREST.
WILLIAM A. HAZARD.

25 Sworn to before me by Wm. Alex. Smith, Robert Olyphant, Alfred M. Hoyt, Walter Jennings, Otto T. Bannard, G. Norrie, Robert S. Holt, Giraud Foster, Gordon Macdonald, and William A. Hazard on the twenty-second day of January, 1895.

[L. S.] CLINTON E. BRAINE,
Notary Public, Kings County.

Certificate filed in N. Y. county.

Affirmed to before me by Henry M. Taber on this twenty-second day of January, 1895.

[L. S.] CLINTON E. BRAINE,
Notary Public, Kings County.

Certificate filed in N. Y. county.

Sworn to before me by William Jay, James C. Parrish, John C. Havemeyer, A. Lanfear Norrie, and Robert W. de Forest this twenty-third day of January, 1895.

[L. S.] CLINTON E. BRAINE,
Notary Public, Kings County.

Certificate filed in N. Y. county.

26 [Endorsed:] Circuit court of the United States, southern district of New York. Lewis H. Hyde, complainant, against The Continental Trust Company of the City of New York and others, defendants. Demurrer of the defendants, William Alexander Smith and others, to complainant's bill of complaint herein. Jay & Candler, solicitors for defendants, William Alexander Smith & or's; office and P. O. address, No. 48 Wall street, New York city, N. Y. Due and timely service of a copy of the within demurrer is hereby admitted this 23d day of January, 1895. Seward, Guthrie, Morawetz & Steele, solicitors for complainant. U. S. circuit court. Filed Jan. 23, 1895. John A. Shields, clerk.

27 In the Circuit Court of the United States, Southern District of New York.

LEWIS H. HYDE, Complainant, *versus* THE CONTINENTAL TRUST COMPANY OF THE CITY OF New York, William Alexander Smith, W. Seward Webb, Richard B. Hartshorne, Robert Olyphant, Alfred M. Hoyt, John C. Havemeyer, Walter Jennings, Otto T. Bannard, Gordon Norrie, William Jay, James C. Parrish, Robert S. Holt, Henry M. Taber, Giraud Foster, A. Lanfear Norrie, Oliver Harriman, Jr., William F. Cochran, Gordon Macdonald, Robert W. de Forest and William A. Hazard, Defendants.	In Equity.

You will please take notice that this cause will be brought to a hearing on bill and demurrer filed therein before Honorable William J. Wallace, circuit judge, on the 24th day of January, 1895, at eleven o'clock in the forenoon or as soon thereafter as counsel can be heard.

Dated New York, January 23rd, 1895.

SEWARD, GUTHRIE, MORAWETZ & STEELE,
Solicitors for Complainant, 29 Nassau Street, New York City.

To Messrs. Jay & Candler, solicitors for defendants.

28 [Endorsed:] United States circuit court, southern district of New York. Lewis H. Hyde against The Continental Trust Company of the City of New York *et al.* Notice of hearing on bill and demurrer. Seward, Guthrie, Morawetz & Steele, solicitors for

complainant, 29 Nassau street, New York. Due and timely service of the within notice of hearing in the above-entitled suit is hereby admitted. Dated January 23, 1895. (S'g'd) Jay & Candler, solicitors for defendants. U. S. circuit court. Filed Jan. 24, 1895. John A. Shields, clerk.

29 At a stated term of the circuit court of the United States for the southern district of New York, held at the United States post-office and court-house building, in the city of New York, this 24th day of January, A. D. 1895.

Present: Honorable William J. Wallace, circuit judge.

LEWIS H. HYDE, Complainant,
versus
THE CONTINENTAL TRUST COMPANY OF THE CITY OF NEW YORK, William Alexander Smith, W. Seward Webb, Richard B. Hartshorne, Robert Olyphant, Alfred M. Hoyt, John C. Havemeyer, Walter Jennings, Otto T. Bannard, Gordon Norrie, William Jay, James C. Parrish, Robert S. Holt, Henry M. Taber, Giraud Foster, A. Lanfear Norrie, Oliver Harriman, Jr., William F. Cochran, Gordon Macdonald, Robert W. de Forest, and William A. Hazard, Defendants.

This cause having come on to be heard upon the bill and the demurrer thereto, and counsel having been heard in support of said demurrer and in opposition thereto, it is by the court now here—

Ordered and decreed that the said demurrer be sustained, and that the bill of complaint of the complainant above named be, and the same is hereby, dismissed with costs.

WM. J. WALLACE.

30 Thereupon the above-named complainant states that in this case the constitutionality of a law of the United States is drawn in question and in open court prays an appeal from said final decree direct to the Supreme Court of the United States pursuant to the statute in such case made and provided. It is therefore further—

Ordered that the said appeal be, and the same is hereby, allowed as prayed for in open court.

The said defendants then admitted in open court due notice of the said appeal and duly waived service of any citation thereon.

WM. J. WALLACE.

31 [Endorsed:] United States circuit court, southern district of New York. Lewis H. Hyde against The Continental Trust Company of the City of New York *et al.* Final decree sustaining demurrer and allowance of appeal. Seward, Guthrie, Morawetz & Steele, solicitors for complainant, 29 Nassau street, New York. U. S. circuit court. Filed Jan. 24, 1895. John A. Shields, clerk.

32 Circuit Court of the United States, Southern District of New York.

LEWIS H. HYDE, Complainant,
versus
THE CONTINENTAL TRUST COMPANY OF THE CITY OF New York, William Alexander Smith, W. Seward Webb, Richard B. Hartshorne, Robert Olyphant, Alfred M. Hoyt, John C. Havemeyer, Walter Jennings, Otto T. Bannard, Gordon Norrie, William Jay, James C. Parrish, Robert S. Holt, Henry M. Taber, Giraud Foster, A. Lanfear Norrie, Oliver Harriman, Jr., William F. Cochran, Gordon Macdonald, Robert W. de Forest, and William A. Hazard, Defendants. } In Equity.

And now comes the complainant above named, by Seward, Guthrie, Morawetz & Steele, his solicitors, and, in connection with the complainant's petition of appeal from the final decree made and entered herein on the 24th day of January, A. D. 1895, dismissing the complainant's bill of complaint with costs, makes and files the following assignment of errors in pursuance of the statute and rule in such case made and provided:

I.

That the court erred in not holding that so much of the act of Congress of the United States entitled "An act to reduce taxation, to provide revenue for the Government, and for other purposes," passed August 15th, 1894, as relates to the levying and collection of a tax upon income, as specified in sections 27 to 37, both in-
33 clusive, were unconstitutional and void, in that such sections violate sections 2 and 8 of article I and articles IV and V of the Constitution of the United States.

II.

That the court erred in not granting to the complainant the relief prayed in and by his bill or any part thereof.

III.

That the court erred in sustaining the demurrer to said bill.

IV.

That the court erred in dismissing said bill with costs.
Dated New York, January 24th, 1895.

SEWARD, GUTHRIE, MORAWETZ & STEELE,
Solicitors for Complainant.

CLARENCE A. SEWARD, *Of Counsel.*

34 [Endorsed:] Circuit court of the United States, southern district of New York. Lewis H. Hyde, complainant, against The Continental Trust Company of the City of New York *et al.*, defendants. Assignment of errors. Seward, Guthrie, Morawetz & Steele, solicitors for compl't, 29 Nassau street, New York. U. S. circuit court. Filed Jan. 24, 1895. John A. Shields, clerk.

35 Circuit Court of the United States, Southern District of New York.

LEWIS H. HYDE, Complainant, *versus* THE CONTINENTAL TRUST COMPANY OF THE CITY OF New York, William Alexander Smith, W. Seward Webb, Richard B. Hartshorne, Robert Olyphant, Alfred M. Hoyt, John C. Havemeyer, Walter Jennings, Otto T. Bannard, Gordon Norrie, William Jay, James C. Parrish, Robert S. Holt, Henry M. Taber, Giraud Foster, A. Lanfear Norrie, Oliver Harriman, Jr., William F. Cochran, Gordon Macdonald, Robert W. De Forest, and William A. Hazard, Defendants.	In Equity.

Know all men by these presents that we, Clarence A. Seward and William D. Guthrie, both of the city, county, and State of New York, are held and firmly bound unto the above-named defendants in the sum of five hundred dollars ($500), to be paid to the said defendants; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 24th day of January, in the year of our Lord 1895.

The condition of this obligation is such that whereas the
36 said defendants above named have obtained a decree in the circuit court of the United States for the southern district of New York sustaining the defendants' demurrer and dismissing the bill of complaint of the complainant with costs, which said decree was entered on the 24th day of January, 1895; and whereas the said complainant, Lewis H. Hyde, in order to obtain a reversal of the same hath obtained the allowance in open court of a petition of appeal to the Supreme Court of the United States;

Now, therefore, if the above-named Lewis H. Hyde shall prosecute his said appeal to effect and if he fail to make his plea good shall answer all damages and costs, then this obligation shall be void; otherwise the same shall remain in full force and virtue.

C. A. SEWARD. [L. S.]
WILLIAM D. GUTHRIE. [L. S.]

Sealed and delivered and taken and acknowledged this 24th day of January, 1895, before me—

E. D. O'BRIEN,
Notary Public, New York County.

[NOTARIAL SEAL.]

Approved by—
WM. J. WALLACE,
Circuit Judge.

37 [Endorsed:] United States circuit court, southern district of New York. Lewis H. Hyde against The Continental Trust Company of the City of New York *et al.* Supersedeas bond. Seward, Guthrie, Morawetz & Steele, solicitors for complainant, 29 Nassau street, New York. U. S. circuit court. Filed Jan. 24, 1895. John A. Shields, clerk.

38 UNITED STATES OF AMERICA, *Southern District of New York*, } ss:

I, John A. Shields, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one to 37, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of Lewis H. Hyde, complainant, *versus* The Continental Trust Company of the City of New York, William Alexander Smith, W. Seward Webb, Richard B. Hartshorne, Robert Olyphant, Alfred M. Hoyt, John C. Havemeyer, Walter Jennings, Otto T. Bannard, Gordon Norrie, William Jay, James C. Parrish, Robert S. Holt, Henry M. Taber, Giraud Foster, A. Lanfear Norrie, Oliver Harriman, Jr., William F. Cochran, Gordon Macdonald, Robert W. De Forest, and William A. Hazard, defendants, as the same remain of record and on file in my office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this twenty-fourth day of January, in the year of our Lord one thousand eight hundred and ninety-five, and of the Independence of the said United States the one hundred and nineteenth.

Seal of U. S. Circuit Court, South. Dist. New York.

JOHN A. SHIELDS, *Clerk.*

Endorsed on cover: Case No. 15,778. S. New York C. C. U. S. Term No., 894. Lewis H. Hyde, appellant, *vs.* The Continental Trust Company of the City of New York *et al.* Filed January 28, 1895.

601

Office Supreme Court, U. S.
FILED.
FEB 28 1895
JAMES H. McKENNEY,
CLERK.

INCOME-TAX LAW.

[Act of August 28, 1894.]

AN ACT to reduce taxation, to provide revenue for the Government, and for other purposes.

SEC. 27. That from and after the first day of January, eighteen hundred and ninety-five, and until the first day of January, nineteen hundred, there shall be assessed, levied, collected, and paid annually upon the gains, profits, and income received in the preceding calendar year by every citizen of the United States, whether residing at home or abroad, and every person residing therein, whether said gains, profits, or income be derived from any kind of property, rents, interest, dividends, or salaries, or from any profession, trade, employment, or vocation carried on in the United States or elsewhere, or from any other source whatever, a tax of two per centum on the amount so derived over and above four thousand dollars, and a like tax shall be levied, collected, and paid annually upon the gains, profits, and income from all property owned and of every business,

Citizens and residents, taxed on income of preceding year exceeding $4,000.

Profits of non-residents acquired here, taxed.

trade, or profession carried on in the United States by persons residing without the United States. And the tax herein provided for shall be assessed, by the Commissioner of Internal Revenue and collected, and paid upon the gains, profits, and income for the year ending the thirty-first day of December next preceding the time for levying, collecting, and paying said tax.

Commissioner to assess the tax.

Gains, profits and income, include what.

SEC. 28. That in estimating the gains, profits, and income of any person there shall be included all income derived from interest upon notes, bonds, and other securities, except such bonds of the United States the principal and interest of which are by the law of their issuance exempt from all Federal taxation; profits realized within the year from sales of real estate purchased within two years previous to the close of the year for which income is estimated; interest received or accrued upon all notes, bonds, mortgages, or other forms of indebtedness bearing interest, whether paid or not, if good and collectible, less the interest which has become due from said person or which has been paid by him during the year; the amount of all premium on bonds, notes, or coupons; the amount of sales of live stock,

sugar, cotton, wool, butter, cheese, pork, beef, mutton, or other meats, hay, and grain, or other vegetable or other productions, being the growth or produce of the estate of such person, less the amount expended in the purchase or production of said stock or produce, and not including any part thereof consumed directly by the family; money and the value of all personal property acquired by gift or inheritance; all other gains, profits, and income derived from any source whatever except that portion of the salary, compensation, or pay received for services in the civil, military, naval, or other service of the United States, including Senators, Representatives, and Delegates in Congress, from which the tax has been deducted, and except that portion of any salary upon which the employer is required by law to withhold, and does withhold the tax and pays the same to the officer authorized to receive it. In computing incomes the necessary expenses actually incurred in carrying on any business, occupation, or profession shall be deducted and also all interest due or paid within the year by such person on existing indebtedness. And all national, State, county, school, and municipal taxes, not including those assessed against local benefits, paid within the year shall be

Salary, portion of, from which tax deducted, excepted.

Deductions allowed from gross profits, include what.

deducted from the gains, profits, or income of the person who has actually paid the same, whether such person be owner, tenant, or mortgagor; also losses actually sustained during the year, incurred in trade or arising from fires, storms, or shipwreck, and not compensated for by insurance or otherwise, and debts ascertained to be worthless, but excluding all estimated depreciation of values and losses within the year on sales of real estate purchased within two years previous to the year for which income is estimated: *Provided*, That no deduction shall be made for any amount paid out for new buildings, permanent improvements, or betterments, made to increase the value of any property or estate: *Provided further*, That only one deduction of four thousand dollars shall be made from the aggregate income of all the members of any family, composed of one or both parents, and one or more minor children, or husband and wife; that guardians shall be allowed to make a deduction in favor of each and every ward, except that in case where two or more wards are comprised in one family, and have joint property interests, the aggregate deduction in their favor shall not exceed four thousand dollars: *And provided further*, That in cases where the salary

No deduction for buildings, improvements, etc.

Only one deduction of $4,000 for each family.

Salary, when $4,000 or less included in income return.

or other compensation paid to any person in the employment or service of the United States shall not exceed the rate of four thousand dollars per annum, or shall be by fees, or uncertain or irregular in the amount or in the time during which the same shall have accrued or been earned, such salary or other compensation shall be included in estimating the annual gains, profits, or income of the person to whom the same shall have been paid, and shall include that portion of any income or salary upon which a tax has not been paid by the employer, where the employer is required by law to pay on the excess over four thousand dollars: *Provided also*, That in computing the income of any person, corporation, company, or association there shall not be included the amount received from any corporation, company, or association as dividends upon the stock of such corporation, company, or association if the tax of two per centum has been paid upon its net profits by said corporation, company, or association as required by this Act.

Dividends on stock not included, when.

SEC. 29. That it shall be the duty of all persons of lawful age having an income of more than three thousand five hundred dollars for the taxable year, computed on

All persons having income over $3,500 must make return.

the basis herein prescribed, to make and render a list or return, on or before the day provided by law, in such form and manner as may be directed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, to the collector or a deputy collector of the district in which they reside, of the amount of their income, gains, and profits, as aforesaid; and all guardians and trustees, executors, administrators, agents, receivers, and all persons or corporations acting in any fiduciary capacity, shall make and render a list or return, as aforesaid, to the collector or a deputy collector of the district in which such person or corporation acting in a fiduciary capacity resides or does business, of the amount of income, gains, and profits of any minor or person for whom they act, but persons having less than three thousand five hundred dollars income are not required to make such report; and the collector or deputy collector, shall require every list or return to be verified by the oath or affirmation of the party rendering it, and may increase the amount of any list or return if he has reason to believe that the same is understated; and in case any such person having a taxable income shall neglect or refuse to make and

Guardians, persons and corporations in fiduciary capacity to return for minor or ward.

Return to be verified by oath.

Collector may increase, when.

render such list and return, or shall render a willfully false or fraudulent list or return, it shall be the duty of the collector or deputy collector, to make such list, according to the best information he can obtain, by the examination of such person, or any other evidence, and to add fifty per centum as a penalty to the amount of the tax due on such list in all cases of willful neglect or refusal to make and render a list or return; and in all cases of a willfully false or fraudulent list or return having been rendered to add one hundred per centum as a penalty to the amount of tax ascertained to be due, the tax and the additions thereto as a penalty to be assessed and collected in the manner provided for in other cases of willful neglect or refusal to render a list or return, or of rendering a false or fraudulent return: *Provided*, That any person, or corporation in his, her, or its own behalf, or as such fiduciary, shall be permitted to declare, under oath or affirmation, the form and manner of which shall be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, that he, she, or his or her, or its ward or beneficiary, was not possessed of an income of four thousand dollars, liable to be assessed according to the

Collector may make return, when.

Penalty for failure to return.

Penalty for false return.

Person or corporation may show that he, or its ward has no taxable income.

Or that same was paid elsewhere.

provisions of this Act; or may declare that he, she, or it, or his, her, or its ward or beneficiary has been assessed and has paid an income tax elsewhere in the same year, under authority of the United States, upon all his, her, or its income, gains, or profits, and upon all the income, gains, or profits for which he, she, or it is liable as such fiduciary, as prescribed by law; and if the collector or deputy collector shall be satisfied of the truth of the declaration, such person or corporation shall thereupon be exempt from income tax in the said district for that year; or if the list or return of any person or corporation, company, or association shall have been increased by the collector or deputy collector, such person or corporation, company, or association may be permitted to prove the amount of income liable to be assessed; but such proof shall not be considered as conclusive of the facts, and no deductions claimed in such cases shall be made or allowed until approved by the collector or deputy collector. Any person or company, corporation, or association feeling aggrieved by the decision of the deputy collector, in such cases may appeal to the collector of the district, and his decision thereon, unless reversed by the Commissioner of Internal

Collector may exempt from tax, when.

Amount of income may be proved, when.

Appeals from deputy collectors and collectors.

Revenue, shall be final. If dissatisfied with the decision of the collector such person or corporation, company, or association may submit the case, with all the papers, to the Commissioner of Internal Revenue for his decision, and may furnish the testimony of witnesses to prove any relevant facts having served notice to that effect upon the Commissioner of Internal Revenue, as herein prescribed.

Testimony on appeal.

Such notice shall state the time and place at which, and the officer before whom, the testimony will be taken; the name, age, residence, and business of the proposed witness, with the questions to be propounded to the witness, or a brief statement of the substance of the testimony he is expected to give: *Provided*, That the Government may at the same time and place take testimony upon like notice to rebut the testimony of the witnesses examined by the person taxed.

Notice to take testimony.

Government may take testimony.

The notice shall be delivered or mailed to the Commissioner of Internal Revenue a sufficient number of days previous to the day fixed for taking the testimony, to allow him, after its receipt, at least five days, exclusive of the period required for mail communication with the place at which the testimony is to be taken, in which to give,

Notice to Commissioner.

should he so desire, instructions as to the cross-examination of the proposed witness.

Depositions to be taken before whom.

Whenever practicable, the affidavit or deposition shall be taken before a collector or deputy collector of internal revenue, in which case reasonable notice shall be given to the collector or deputy collector of the time fixed for taking the deposition or affidavit:

No penalty assessed until after notice.

Provided further, That no penalty shall be assessed upon any person or corporation, company, or association for such neglect or refusal or for making or rendering a willfully false or fraudulent return, except after reasonable notice of the time and place of hearing, to be prescribed by the Commissioner of Internal Revenue so as to give the person charged an opportunity to be heard.

Taxes payable July 1.

SEC. 30. The taxes on incomes herein imposed shall be due and payable on or before the first day of July in each year; and to any sum or sums annually due and unpaid after the first day of July as aforesaid, and for ten days after notice and demand thereof by the collector, there shall be levied, in addition thereto, the sum of five per centum on the amount of taxes unpaid, and interest at the rate of one per centum per month upon

Penalty for nonpayment.

said tax from the time the same becomes due, as a penalty, except from the estates of deceased, insane, or insolvent persons.

Nonresident may receive exemption, how.

SEC. 31. Any nonresident may receive the benefit of the exemptions hereinbefore provided for by filing with the deputy collector of any district a true list of all his property and sources of income in the United States and complying with the provisions of section twenty-nine of this Act as if a resident. In computing income he shall include all income from every source, but unless he be a citizen of the United States he shall only pay on that part of the income which is derived from any source in the United States. In case such nonresident fails to file such statement, the collector of each district shall collect the tax on the income derived from property situated in his district, subject to income tax, making no allowance for exemptions, and all property belonging to such nonresident shall be liable to distraint for tax: *Provided*, That nonresident corporations shall be subject to the same laws as to tax as resident corporations, and the collection of the tax shall be made in the same manner as provided for collections of taxes against nonresident persons.

List of nonresidents to contain, what.

If list not filed, no exemption allowed.

Nonresident corporations.

Corporations shall pay tax on net profits.

SEC. 32. That there shall be assessed, levied,

and collected, except as herein otherwise provided, a tax of two per centum annually on the net profits or income above actual operating and business expenses, including expenses for materials purchased for manufacture or bought for resale, losses, and interest on bonded and other indebtedness of all banks, banking institutions, trust companies, saving institutions, fire, marine, life, and other insurance companies, railroad, canal, turnpike, canal navigation, slack water, telephone, telegraph, express, electric light, gas, water, street railway companies, and all other corporations, companies, or associations doing business for profit in the United States, no matter how created and organized, but not including partnerships.

Corporations subject to tax.

That said tax shall be paid on or before the first day of July in each year; and if the president or other chief officer of any corporation, company, or association, or in the case of any foreign corporation, company, or association, the resident manager or agent shall neglect or refuse to file with the collector of the internal-revenue district in which said corporation, company, or association shall be located or be engaged in business, a statement verified by his oath or affirmation, in such form as shall be prescribed by the Com-

Tax payable July 1.

missioner of Internal Revenue, with the approval of the Secretary of the Treasury, showing the amount of net profits or income received by said corporation, company, or association during the whole calendar year last preceding the date of filing said statement as hereinafter required, the corporation, company, or association making default shall forfeit as a penalty the sum of one thousand dollars and two per centum on the amount of taxes due, for each month until the same is paid, the payment of said penalty to be enforced as provided in other cases of neglect and refusal to make return of taxes under the internal-revenue laws.

Penalty for failure of corporation to make return.

The net profits or income of all corporations, companies, or associations shall include the amounts paid to shareholders, or carried to the account of any fund, or used for construction, enlargement of plant, or any other expenditure or investment paid from the net annual profits made or acquired by said corporations, companies, or associations.

Net profits of corporations include what.

That nothing herein contained shall apply to States, counties, or municipalities; nor to corporations, companies, or associations organized and conducted solely for charitable, religious, or educational purposes, including fraternal beneficiary societies, orders, or as-

Exempt corporations include: States, counties, etc.; Charitable associations, etc.; Fraternal societies;

sociations operating upon the lodge system and providing for the payment of life, sick, accident, and other benefits to the members of such societies, orders, or associations and dependents of such members; nor to the stocks, shares, funds, or securities held by any fiduciary or trustee for charitable, religious, or educational purposes; nor to building and loan associations or companies which make loans only to their shareholders; nor to such savings banks, savings institutions or societies as shall, first, have no stockholders or members except depositors and no capital except deposits; secondly, shall not receive deposits to an aggregate amount, in any one year, of more than one thousand dollars from the same depositor; thirdly, shall not allow an accumulation or total of deposits, by any one depositor, exceeding ten thousand dollars; fourthly, shall actually divide and distribute to its depositors, ratably to deposits, all the earnings over the necessary and proper expenses of such bank, institution, or society, except such as shall be applied to surplus; fifthly, shall not possess, in any form, a surplus fund exceeding ten per centum of its aggregate deposits; nor to such savings banks, savings institutions, or societies composed of members who do not

Certain building and loan associations;

Certain savings banks;

participate in the profits thereof and which pay interest or dividends only to their depositors; nor to that part of the business of any savings bank, institution, or other similar association having a capital stock, that is conducted on the mutual plan solely for the benefit of its depositors on such plan, and which shall keep its accounts of its business conducted on such mutual plan separate and apart from its other accounts.

Part of the business of savings banks;

Nor to any insurance company or association which conducts all its business solely upon the mutual plan, and only for the benefit of its policy holders or members, and having no capital stock and no stock or shareholders, and holding all its property in trust and in reserve for its policy holders or members; nor to that part of the business of any insurance company having a capital stock and stock and shareholders, which is conducted on the mutual plan, separate from its stock plan of insurance, and solely for the benefit of the policy holders and members insured on said mutual plan, and holding all the property belonging to and derived from said mutual part of its business in trust and reserve for the benefit of its policy holders and members insured on said mutual plan.

Certain insurance companies.

Part of the business of insurance companies.

Taxes paid, included in expenses of corporations.

That all State, county, municipal, and town taxes paid by corporations, companies, or associations, shall be included in the operating and business expenses of such corporations, companies, or associations.

Salaries over $4,000, tax on.

SEC. 33. That there shall be levied, collected, and paid on all salaries of officers, or payments for services to persons in the civil, military, naval, or other employment or service of the United States, including Senators and Representatives and Delegates in Congress, when exceeding the rate of four thousand dollars per annum, a tax of two per centum on the excess above the said four thousand dollars; and it shall be the duty of all paymasters and all disbursing officers under the Government of the United States, or persons in the employ thereof, when making any payment to any officers or persons as aforesaid, whose compensation is determined by a fixed salary, or upon settling or adjusting the accounts of such officers or persons, to deduct and withhold the aforesaid tax of two per centum; and the pay roll, receipts, or account of officers or persons paying such tax as aforesaid shall be made to exhibit the fact of such payment. And it shall be the duty of the accounting officers of the

Duties of disbursing officers.

Duties of accounting officers of the Treasury.

Treasury Department, when auditing the accounts of any paymaster or disbursing officer, or any officer withholding his salary from moneys received by him, or when settling or adjusting the accounts of any such officer to require evidence that the taxes mentioned in this section have been deducted and paid over to the Treasurer of the United States, or other officer authorized to receive the same. Every corporation which pays to any employee a salary or compensation exceeding four thousand dollars per annum shall report the same to the collector or deputy collector of his district and said employe shall pay thereon, subject to the exemptions herein provided for, the tax of two per centum on the excess of his salary over four thousand dollars: *Provided*, That salaries due to State, county or municipal officers shall be exempt from the income tax herein levied.

Corporations must report salaries paid, when.

Salaries of State and county officers exempt.

SEC. 34. That sections thirty-one hundred and sixty-seven, thirty-one hundred and seventy-two, thirty-one hundred and seventy-three, and thirty-one hundred and seventy-six of the Revised Statutes of the United States as amended are hereby amended so as to read as follows:

Amending secs. 3167, 3172, 3173, and 3176, R. S.

Unlawful to make known source or amount of income.

"SEC. 3167. That it shall be unlawful for any collector, deputy collector, agent, clerk or other officer or employe of the United States to divulge or to make known in any manner whatever not provided by law to any person the operations, style of work or apparatus of any manufacturer or producer visited by him in the discharge of his official duties, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any income return by any person or corporation, or to permit any income return or copy thereof or any book containing any abstract or particulars thereof, to be seen or examined by any person except as provided by law; and it shall be unlawful for any person to print or publish in any manner whatever not provided by law, any income return or any part thereof or the amount or source of income, profits, losses, or expenditures appearing in any income return; and any offense against the foregoing provision shall be a misdemeanor and be punished by a fine not exceeding one thousand dollars or by imprisonment not exceeding one year, or both, at the discretion of the court; and if the offender be an officer or employe of the United States he shall be dismissed from office and be in-

Unlawful to publish amount or source of income.

Penalty for making known or publishing income returns.

capable thereafter of holding any office under the Government.

"SEC. 3172. That every collector shall, from time to time, cause his deputies to proceed through every part of his district and inquire after and concerning all persons therein who are liable to pay any internal revenue tax, and all persons owning or having the care and management of any objects liable to pay any tax, and make a list of such persons and enumerate said objects.

Collectors shall cause deputies to canvass districts.

"SEC. 3173. That it shall be the duty of any person, partnership, firm, association, or corporation, made liable to any duty, special tax, or other tax imposed by law, when not otherwise provided for, in case of a special tax, on or before the thirty-first day of July in each year, in case of income tax on or before the first Monday of March in each year, and in other cases before the day on which the taxes accrue, to make a list or return, verified by oath or affirmation, to the collector or a deputy collector of the district where located, of the articles or objects, including the amount of annual income, charged with a duty or tax, the quantity of goods, wares, and merchandise made or sold, and charged

Tax returns must be made on or before first Monday in March.

with a tax, the several rates and aggregate amount, according to the forms and regulations to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, for which such person, partnership, firm, association, or corporation is liable: *Provided*, That if any person liable to pay any duty or tax, or owning, possessing, or having the care or management of property, goods, wares, and merchandise, articles or objects liable to pay any duty, tax, or license, shall fail to make and exhibit a list or return required by law, but shall consent to disclose the particulars of any and all the property, goods, wares, and merchandise, articles and objects liable to pay any duty or tax, or any business or occupation liable to pay any tax as aforesaid, then, and in that case, it shall be the duty of the collector or deputy collector to make such list or return, which, being distinctly read, consented to, and signed and verified by oath or affirmation by the person so owning, possessing, or having the care and management as aforesaid, may be received as the list of such person: *Provided further*, That in case no annual list or return has been rendered by such person to the collector or deputy collector as required by law, and the person shall

Collectors may make returns when particulars are furnished.

Notice to be given to absentees to render returns.

be absent from his or her residence or place of business at the time the collector or a deputy collector shall call for the annual list or return, it shall be the duty of such collector or deputy collector to leave at such place of residence or business, with some one of suitable age and discretion, if such be present, otherwise to deposit in the nearest post-office a note or memorandum addressed to such person, requiring him or her to render to such collector or deputy collector the list or return required by law, within ten days from the date of such note or memorandum, verified by oath or affirmation. And if any person on being notified or required as aforesaid shall refuse or neglect to render such list or return within the time required as aforesaid or whenever any person who is required to deliver a monthly or other return of object subject to tax fails to do so at the time required, or delivers any return which, in the opinion of the collector, is false or fraudulent, or contains any undervaluation or understatement, it shall be lawful for the collector to summon such person, or any other person having possession, custody, or care of books of account containing entries relating to the business of such person, or

Collectors may summon persons to produce books and testify concerning returns.

any other person he may deem proper, to appear before him and produce such books, at a time and place named in the summons, and to give testimony or answer interrogatories, under oath, respecting any objects liable to tax or the returns thereof. The collector may summon any person residing or found within the State in which his district lies; and when the person intended to be summoned does not reside and can not be found within such State, he may enter any collection district where such person may be found, and there make the examination herein authorized. And to this end he may there exercise all the authority which he might lawfully exercise in the district for which he was commissioned.

Collectors may enter other districts to examine persons and books when.

"SEC. 3176. When any person, corporation, company, or association refuses or neglects to render any return or list required by law, or renders a false or fraudulent return or list, the collector or any deputy collector shall make, according to the best information which he can obtain, including that derived from the evidence elicited by the examination of the collector, and on his own view and information, such list or return, according to the form prescribed, of the income, property,

Collectors or deputies may make return, when.

and objects liable to tax owned or possessed or under the care or management of such person, or corporation, company or association and the Commissioner of Internal Revenue shall assess all taxes not paid by stamps, including the amount, if any, due for special tax, income or other tax, and in case of any return of a false or fraudulent list or valuation intentionally he shall add one hundred per centum to such tax; and in case of a refusal or neglect, except in cases of sickness or absence, to make a list or return, or to verify the same as aforesaid, he shall add fifty per centum to such tax. In case of neglect occasioned by sickness or absence as aforesaid the collector may allow such further time for making and delivering such lists or return as he may deem necessary, not exceeding thirty days. The amount so added to the tax shall be collected at the same time and in the same manner as the tax unless the neglect or falsity is discovered after the tax has been paid, in which case the amount so added shall be collected in the same manner as the tax; and the list or return so made and subscribed by such collector or deputy collector shall be held prima facie good and sufficient for all legal purposes."

Commissioner shall assess taxes.

Penalty for false or fraudulent return, and for failure to render.

Time allowed in case of sickness.

Penalty, when and how collected.

Corporations shall render return on or before first Monday in March.

SEC. 35. That every corporation, company, or association doing business for profit shall make and render to the collector of its collection district, on or before the first Monday of March in every year, beginning with the year eighteen hundred and ninety-five, a full return, verified by oath or affirmation, in such form as the Commissioner of Internal Revenue may prescribe, of all the following matters for the whole calendar year last preceding the date of such return:

Matters to be contained in return of corporations.

First. The gross profits of such corporation, company, or association, from all kinds of business of every name and nature.

Second. The expenses of such corporation, company, or association, exclusive of interest, annuities, and dividends.

Third. The net profits of such corporation, company, or association, without allowance for interest, annuities, or dividends.

Fourth. The amount paid on account of interest, annuities, and dividends, stated separately.

Fifth. The amount paid in salaries of four thousand dollars or less to each person employed.

Sixth. The amount paid in salaries of more than four thousand dollars to each person employed and the name and address

of each of such persons and the amount paid to each.

Books of account to be kept by corporations.

SEC. 36. That it shall be the duty of every corporation, company, or association doing business for profit to keep full, regular, and accurate books of account, upon which all its transactions shall be entered from day to day, in regular order, and whenever a collector or deputy collector of the district in which any corporation, company, or association is assessable shall believe that a true and correct return of the income of such corporation, company, or association has not been made, he shall make an affidavit of such belief and of the grounds on which it is founded, and file the same with the Commissioner of Internal Revenue, and if said Commissioner shall, on examination thereof, and after full hearing upon notice given to all parties, conclude there is good ground for such belief, he shall issue a request in writing to such corporation, company, or association to permit an inspection of the books of such corporation, company, or association to be made; and if such corporation, company, or association shall refuse to comply with such request, then the collector or deputy collector of the district shall make from such

Commissioner may request inspection of books, when.

Collectors may make return of income of corporations, adding penalty, when.

information as he can obtain an estimate of the amount of such income and then add fifty per centum thereto, which said assessment so made shall then be the lawful assessment of such income.

Collectors to give receipts for taxes.

SEC. 37. That it shall be the duty of every collector of internal revenue, to whom any payment of any taxes other than the tax represented by an adhesive stamp or other engraved stamp is made under the provisions of this Act, to give to the person making such payment a full written or printed receipt, expressing the amount paid and the particular account for which such payment was made; and whenever such payment is made such collector shall, if required, give a separate receipt for each tax paid by any debtor, on account of payments made to or to be made by him to separate creditors in such form that such debtor can conveniently produce the same separately to his several creditors in satisfaction of their respective demands to the amounts specified in such receipts; and such receipts shall be sufficient evidence in favor of such debtor, to justify him in withholding the amount therein expressed from his next payment to his creditor; but such creditor may, upon giving to

Separate receipts given, when.

Receipts shall be evidence for certain purposes.

his debtor a full written receipt, acknowledging the payment to him of whatever sum may

JOINT RESOLUTION.

Extending from March first, Eighteen hundred and ninety-five, to the Fifteenth day of April, Eighteen hundred and ninety-five, the time for making returns of income for the year Eighteen hundred and ninety-four and for other purposes:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the time fixed by existing law for the rendering of income returns, to wit: 'On or before the first Monday of March in every year' (Section Thirty-five, Act of August Twenty-eight, Eighteen hundered and ninety-four, and Section Thirty-one hundred and seventy-three, Revised Statutes, as amended by Section Thirty-four of that Act), is hereby extended, with reference only to returns of income for the year Eighteen hundred and ninety four, so that it shall be lawful to make such returns for that year on or before the Fifteenth day of April, Eighteen hundred and ninety five.

Resolved, That in computing incomes under said Act the amounts necessarily paid for fire insurance premiums and for ordinary repairs shall be deducted.

Resolved, That in computing incomes under said Act the amounts received as dividends upon the stock of any corporation, company or association shall not be included in case such dividends are also liable to the tax of two per centum upon the net profits of said corporation, company or association, although such tax may not have been actually paid by said corporation, company or association at the time of making returns by the person, corporation or association receiving such dividends, and returns or reports of the names and salaries of employes shall not be required from employers unless called for by the Collector in order to verify the returns of employes.

Approved February 21, 1895.

his debtor a full written receipt, acknowledging the payment to him of whatever sum may be actually paid, and accepting the amount of tax paid as aforesaid (specifying the same) as a further satisfaction of the debt to that amount, require the surrender to him of such collector's receipt.

158-601

JAMES H. McKENNEY,
CLERK.

INCOME TAX LAWS

PRIOR TO ACT OF AUGUST 28, 1894.

Act of August 6, 1861, - - - - - pp. 1–6
Act of July 1, 1862, - - - - - - pp. 7–20
Act of March 3, 1863, - - - - - p. 21
Act of June 30, 1864, - - - - - - pp. 22–38
Act of March 3, 1865, - - - - - pp. 39–44
Act of March 10, 1866, - - - - - p. 45
Act of July 13, 1866, - - - - - pp. 46–51
Act of March 2, 1867, - - - - - pp. 52–59
Act of July 14, 1870, - - - - - pp. 60–69

SEWARD, GUTHRIE, MORAWETZ & STEELE,
29 Nassau Street,
New York, N. Y.

ACT OF AUGUST 6TH, 1861 (12 STAT. AT LARGE, PP. 309–311), being Chapter XLV of the Acts of 1861, entitled, "An Act to provide increased Revenue from Imports, to pay Interest on the Debt, and for other Purposes."

SEC. 49. *And be it further enacted*, That, from and after the first day of January next, there shall be levied, collected, and paid, upon the annual income of every person residing in the United States, whether such income is derived from any kind of property, or from any profession, trade, employment, or vocation carried on in the United States or elsewhere, or from any other source whatever, if such annual income exceeds the sum of *eight hundred dollars*, a tax of three per centum on the amount of such excess of such income above eight hundred dollars: *Provided*, That upon such portion of said income as shall be derived from interest upon treasury notes or other securities of the United States, there shall be levied, collected, and paid a tax of one and one half per centum. Upon the income, rents, or dividends accruing upon any property, securities or stocks owned in the United States by any citizen of the United States residing abroad, there shall be levied, collected, and paid a tax of five per centum, excepting that portion of said income derived from interest on treasury notes and other securities of the Government of the United States, which shall pay one and one half per centum. The tax herein provided shall be assessed upon the annual income of the persons hereinafter named for the year next preceding the time for assessing said tax, to wit, the year

next preceding the first of January, eighteen hundred and sixty-two; and the said taxes, when so assessed and made public, shall become a lien on the property or other sources of said income for the amount of the same, with the interest and other expenses of collection until paid: *Provided*, That, in estimating said income, all national, state, or local taxes assessed upon the property, from which the income is derived, shall be first deducted.

SEC. 50. *And be it further enacted*, That it shall be the duty of the President of the United States, and he is hereby authorized, by and with the advice and consent of the Senate, to appoint one principal assessor and one principal collector in each of the States and Territories of the United States, and in the District of Columbia, to assess and collect the internal duties or income tax imposed by this act, with authority in each of said officers to appoint so many assistants as the public service may require, to be approved by the Secretary of the Treasury. The said taxes to be assessed and collected under such regulations as the Secretary of the Treasury may prescribe. The said collectors, herein authorized to be appointed, shall give bonds, to the satisfaction of the Secretary of the Treasury, in such sums as he may prescribe, for the faithful performance of their respective duties. And the Secretary of the Treasury shall prescribe such reasonable compensation for the assessment and collection of said internal duties or income tax as may appear to him just and proper; not, however, to exceed in any case the sum of two thousand five hundred dollars per annum for the principal officers herein referred to, and twelve hundred dollars per annum for an assistant. The

assistant collectors herein provided shall give bonds to the satisfaction of the principal collector for the faithful performance of their duties. The Secretary of the Treasury is further authorized to select and appoint one or more depositaries in each State for the deposit and safe-keeping of the moneys arising from the taxes herein imposed when collected, and the receipt of the proper officer of such depository to the collector for the moneys deposited by him shall be the proper voucher for such collector in the settlement of his account at the Treasury Department. And he is further authorized and empowered to make such officer or depositary the disbursing agent of the Treasury for the payment of all interest due to the citizens of such State upon the treasury notes or other government securities issued by authority of law. And he shall also prescribe the forms of returns to be made to the department by all assessors and collectors appointed under the authority of this act. He shall also prescribe the form of oath or obligation to be taken by the several officers authorized or directed to be appointed and commissioned by the President under this act, before a competent magistrate duly authorized to administer oaths, and the form of the return to be made thereon to the Treasury Department.

SEC. 51. *And be it further enacted*, That the tax herein imposed by the forty-ninth section of this act shall be due and payable on or before the thirtieth day of June, in the year eighteen hundred and sixty-two, and all sums due and unpaid at that day shall draw interest thereafter at the rate of six per centum per annum; and if any person or persons shall neglect or refuse to pay after due

notice said tax assessed against him, her, or them, for the space of more than thirty days after the same is due and payable, it shall be lawful for any collector or assistant collector charged with the duty of collecting such tax, and they are hereby authorized, to levy the same on the visible property of any such person, or so much thereof as may be sufficient to pay such tax, with the interest due thereon, and the expenses incident to such levy and sale, first giving thirty days' public notice of the time and place of the sale thereof; and in case of the failure of any person or persons authorized to act as agent or agents for the collection of the rents or other income of any person residing abroad shall neglect or refuse to pay the tax assessed thereon (having had due notice) for more than thirty days after the thirtieth of June, eighteen hundred and sixty-two, the collector or his assistant, for the district where such property is located, or rents or income is payable, shall be and hereby is authorized to levy upon the property itself, and to sell the same, or so much thereof as may be necessary to pay the tax assessed, together with the interest and expenses incident to such levy and sale, first giving thirty days' public notice of the time and place of sale. And in all cases of the sale of property herein authorized, the conveyance by the officer authorized to make the sale, duly executed, shall give a valid title to the purchaser, whether the property sold be real or personal. And the several collectors and assistants appointed under the authority of this act may, if they find no property to satisfy the taxes assessed upon any person by authority of the forty-ninth section of this act, and which such person neglects to pay as

hereinbefore provided, shall have power, and it shall be their duty, to examine under oath the person assessed under this act, or any other person, and may sell at public auction, after ten days' notice, any stock, bonds, or choses in action, belonging to said person, or so much thereof as will pay such tax and the expenses of such sale; and in case he refuses to testify, the said several collectors and assistants shall have power to arrest such person and commit him to prison, to be held in custody until the same shall be paid, with interest thereon, at the rate of six per centum per annum, from the time when the same was payable as aforesaid, and all fees and charges of such commitment and custody. And the place of custody shall in all cases be the same provided by law for the custody of persons committed for any cause by the authority of the United States, and the warrant of the collector, stating the cause of commitment, shall be sufficient authority to the proper officer for receiving and keeping such person in custody until the amount of said tax and interest, and all fees and the expense of such custody, shall have been fully paid and discharged; which fees and expenses shall be the same as are chargeable under the laws of the United States in other cases of commitment and custody. And it shall be the duty of such collector to pay the expenses of such custody, and the same, with his fees, shall be allowed on settlement of his accounts. And the person so committed shall have the same right to be discharged from such custody as may be allowed by the laws of the State or Territory, or the District of Columbia, where he is so held in custody, to persons committed under the laws of such State or Terri-

tory, or District of Columbia, for the non-payment of taxes, and in the manner provided by such laws; or he may be discharged at any time by order of the Secretary of the Treasury.

ACT OF JULY 1ST, 1862 (12 STAT. AT LARGE, PP. 473–475), being Chapter CXIX of the Acts of 1862, entitled, "An Act to provide Internal Revenue to support the Government and to pay Interest on the Public Debt."

SEC. 80. "*And be it further enacted*, That on and after the first day of August, eighteen hundred and sixty-two, *any person or persons, firms, companies or corporations, owning or possessing, or having the care or management of any railroad or railroads* upon which steam is used as a propelling power, or of any steamboat or other vessel propelled by steam power, shall be subject to and pay a *duty* of three per centum on the gross amount of all the receipts of such railroad or railroads or steamvessel for the transportation of passengers over and upon the same; and any person or persons, firms, companies, or corporations owning or possessing, or having the care or management of any railroad or railroads using any other power than steam thereon, or owning, possessing, or having the care or management of any ferry-boat or vessel used as a ferry-boat, propelled by steam or horse power, shall be subject to and pay a duty of one and a half per centum upon the gross receipts of such railroad or ferry-boat, respectively, for the transportation of passengers over and upon said railroads, steamboats, and ferry-boats respectively; and any person or persons, firms, companies, or corporations, owning, possessing, or having the care or management of any bridge authorized by law to

receive toll for the transit of passengers, beasts, carriages, teams, and freight of any description over such bridge, shall be subject to and pay a duty of three per centum on the gross amount of all their receipts of every description. And the owner, possessor or person or persons having the care and management of any such railroad, steamboat, ferryboat, or other vessel, or bridge, as aforesaid, shall, within five days after the end of each and every month, commencing as hereinbefore mentioned, make a list or return to the assistant assessor of the district within which such owner, possessor, company, or corporation, may have his or its place of business, or where any such railroad, steamboat, ferry boat, or bridge is located or belongs, respectively, stating the gross amount of such receipts for the month next preceding, which return shall be verified by the oath or affirmation of such owner, possessor, manager, agent, or other proper officer, in the manner and form to be prescribed from time to time by the Commissioner of Internal Revenue, and shall also, monthly, at the time of making such return, pay to the collector or deputy collector of the district the full amount of duties which have accrued on such receipts for the month aforesaid; and in case of neglect or refusal to make said lists or return for the space of five days after such return should be made as aforesaid, the assessor or assistant assessor shall proceed to estimate the amount received and the duties payable thereon, as hereinbefore provided in other cases of delinquency to make return for purposes of assessment; and for the purpose of making such assessment, or of ascertaining the correctness of any such return, the books of any such person, com-

pany, or corporation shall be subject to the inspection of the assessor or assistant assessor on his demand or request therefor; and in case of neglect or refusal to pay the duties as aforesaid when the same have been ascertained as aforesaid, for the space of five days after the same shall have become payable, the owner, possessor, or person having the management as aforesaid, shall pay, in addition, five per centum on the amount of such duties; and for any attempt knowingly to evade the payment of such duties, the said owner, possessor or person having the care or management as aforesaid, shall be liable to pay a penalty of one thousand dollars for every such attempt, to be recovered as provided in this act for the recovery of penalties; and all provisions of this act in relation to liens and collections by distraint not incompatible herewith, shall apply to this section and the objects therein embraced: *Provided*, That all such persons, companies, and corporations shall have the right to add the duty or tax imposed hereby to their rates of fare whenever their liability thereto may commence, any limitations which may exist by law or by agreement with any person or company which may have paid, or be liable to pay, such fare to the contrary notwithstanding.

SEC. 81. *And be it further enacted*, That on and after the first day of July, eighteen hundred and sixty-two, any person or persons owning or possessing, or having the care or management of any railroad company or railroad corporation, being indebted for any sum or sums of money for which bonds or other evidences of indebtedness have been issued, payable in one or more years after date, upon which interest is, or shall be, stip-

ulated to be paid, or coupons representing the interest shall be or shall have been issued to be paid, *and all dividends in scrip or money or sums of money thereafter declared due or payable to stockholders of any railroad company, as part of the earnings, profits, or gains of said companies, shall be subject to pay a duty of three per centum on the amount of all such interest or coupons or dividends whenever the same shall be paid;* and said railroad companies or railroad corporations, or any person or persons owning, possessing, or having the care or management of any railroad company or railroad corporation, are hereby *authorized* and *required* to *deduct* and *withhold* from all payments made to any person, persons, or party, after the first day of July, as aforesaid, on account of any interest or coupons or dividends due and payable as aforesaid, the said duty or sum of three per centum; and the duties deducted as aforesaid, and certified by the president or other proper officer of said company or corporation, shall be a receipt and discharge, according to the amount thereof, of said railroad companies or railroad corporations, and the owners, possessors, and agents thereof, on dividends and on bonds or other evidences of their indebtedness, upon which interest or coupons are payable, holden by any person or party whatsoever, and a list or return shall be made and rendered within thirty days after the time fixed when said interest or coupons or dividends become due or payable, and as often as every six months, to the Commissioner of Internal Revenue, which shall contain a true and faithful account of the duties received and chargeable, as aforesaid, during the time when such duties have accrued or

should accrue, and remaining unaccounted for; and there shall be annexed to every such list or return a declaration under oath or affirmation, in manner and form as may be prescribed by the Commissioner of Internal Revenue, of the president, treasurer, or some proper officer of said railroad company or railroad corporation, that the same contains a true and faithful account of the duties so withheld and received during the time when such duties have accrued or should accrue, and not accounted for, and for any default in the making or rendering of such list or return, with the declaration annexed, as aforesaid, the person or persons owning, possessing, or having the care or management of such railroad company or railroad corporation, making such default, shall forfeit, as a penalty, the sum of five hundred dollars; and in case of any default in making or rendering said list, or of any default in the payment of the duty, or any part thereof, accruing or which should accrue, the assessment and collection shall be made according to the general provisions of this act.

SEC. 82. *And be it further enacted*, That on and after the first day of July, eighteen hundred and sixty-two, there shall be levied, collected, and paid by *all banks, trust companies, and savings institutions, and by all fire, marine, life, inland, stock, and mutual insurance companies, under whatever style or name known or called, of the United States or Territories, specially incorporated or existing under general laws, or which may be hereafter incorporated or exist as aforesaid*, on all dividends in scrip or money thereafter declared due or paid to stockholders, to policy holders, or to depositors, as part of the earnings, profits, or

gains of said banks, trust companies, savings institutions, or insurance companies, and on all sums added to their surplus or contingent funds, a duty of three per centum: *Provided*, That the duties upon the dividends of life insurance companies shall not be deemed due, or to be collected *until* such dividends shall be payable by such companies. And said banks, trust companies, savings institutions, and insurance companies are hereby authorized and required to *deduct* and *withhold* from all payments made to any person, persons, or party, *on account of any dividends or sums of money* that may be due and payable, as aforesaid, after the first day of July, eighteen hundred sixty-two, the said duty of three per centum. And a list or return shall be made and rendered within thirty days after the time fixed when such dividends or sums of money shall be declared due and payable, and as often as every six months, to the Commissioner of Internal Revenue, which shall contain a true and faithful account of the amount of duties accrued or which should accrue from time to time, as aforesaid, during the time when such duties remain unaccounted for, and there shall be annexed to every such list or return a declaration, under oath or affirmation, to be made in form and manner as shall be prescribed by the Commissioner of Internal Revenue, of the president, or some other proper officer of said bank, trust company, savings institution, or insurance company, respectively, that the same contains a true and faithful account of the duties which have accrued or should accrue, and not accounted for, and for any default in the delivery of such list or return, with such declaration annexed, the bank, trust company,

savings institution, or insurance company making such default shall forfeit, as a penalty, the sum of five hundred dollars.

SEC. 83. *And be it further enacted*, That any person or persons owning or possessing, or having the care or management of any railroad company or railroad corporation, bank, trust company, savings institution, or insurance company, as heretofore mentioned, required under this act to make and render any list or return to the Commissioner of Internal Revenue, shall, upon rendering the same, pay to the said Commissioner of Internal Revenue the amount of the duties due on such list or return, and in default thereof shall forfeit as a penalty the sum of five hundred dollars; and in case of neglect or refusal to make such list or return as aforesaid, or to pay the duties as aforesaid, for the space of thirty days after the time when said list should have been made and rendered, or when said duties shall have become due and payable, the assessment and collection shall be made according to the general provisions heretofore prescribed in this act.

SEC. 84. *And be it further enacted*, That on the first day of October, anno Domini eighteen hundred and sixty two, and on the first day of each quarter of the year thereafter, there shall be paid by *each insurance company, whether inland or marine, and by each individual or association engaged in the business of insurance from loss or damage by fire, or by the perils of the sea, the* DUTY of one per centum upon the gross receipts for premiums and assessments by such individual, association, or company during the quarter then preceding; and like duty shall be paid by the agent

of any foreign insurance company having an office or doing business within the United States.

SEC. 85. *And be it further enacted*, That on the first day of October next, and on the first day of each quarter thereafter, an account shall be made and rendered to the commissioner of internal revenue by all insurance companies, or their agents, or associations or individuals making insurance, except life insurance, including agents of all foreign insurance companies, which shall contain a true and faithful account of the insurance made, renewed or continued, or endorsed upon any open policy by said companies, or their agents, or associations, or individuals during the preceding quarter, setting forth the amount insured, and the gross amount received, and the duties accruing thereon under this act; and there shall be annexed to and delivered with every such quarterly account an affidavit, in the form to be prescribed by the Commissioner of Internal Revenue, made by one of the officers of said company or association, or individual, or by the agent in the case of a foreign company, that the statements in said accounts are in all respects just and true; and such quarterly accounts shall be rendered to the Commissioner of Internal Revenue within thirty days after the expiration of the quarter for which they shall be made up, and upon rendering such account, with such affidavit, as aforesaid, thereto annexed, the amount of the duties due by such quarterly accounts shall be paid to the Commissioner of Internal Revenue; and for every default in the delivery of such quarterly account, with such affidavit annexed thereto, or in the payment of the amount of the duties due by such quarterly account, the company, or agent, or association,

or individual making such default shall forfeit and pay, in addition to such duty, the sum of five thousand dollars.

* * * * * * *

SEC. 89. *And be it further enacted*, That for the purpose of modifying and reënacting, as hereinafter provided, so much of an act, entitled "An act to provide increased revenue from imports to pay interest on the public debt, and for other purposes," approved fifth of August, eighteen hundred and sixty-one, as relates to income tax; that is to say, sections forty-nine, fifty, (except so much thereof as relates to the selection and appointment of depositaries,) and fifty-one, be, and the same are hereby, repealed.

SEC. 90. *And be it further enacted*, That there shall be levied, collected, and paid annually, upon the annual gains, profits, or income of every person residing in the United States, whether derived from any kind of property, rents, interest, dividends, salaries, or from any profession, trade, employment, or vocation carried on in the United States or elsewhere, or from any other source whatever, except as hereinafter mentioned, if such annual gains, profits, or income exceed the sum of *six hundred dollars*, and do not exceed the sum of ten thousand dollars, a *duty of three per centum* on the amount of such annual gains, profits, or income over and above the said sum of six hundred dollars; if said income exceeds the sum of *ten thousand dollars*, a *duty of five per centum* upon the amount thereof exceeding six hundred dollars; and upon the annual gains, profits, or income, rents, and divi-

dends accruing upon any property, securities, and stocks owned in the United States by any citizen of the United States residing abroad, except as hereinafter mentioned, and not in the employment of the government of the United States, there shall be levied, collected, and paid a duty of five per centum.

SEC. 91. *And be it further enacted*, That in estimating said annual gains, profits, or income, whether subject to a duty, as provided in this act, of three per centum, or of five per centum, all other national, state and local taxes, lawfully assessed upon the property or other sources of income of any person as aforesaid, from which said annual gains, profits, or income of such person is or should be derived, *shall be first deducted* from the gains, profits, or income of the person or persons who actually pay the same, whether owner or tenant, and all gains, profits, or income derived from salaries of officers, or payments to persons in the civil, military, naval, or other service of the United States, including senators, representatives, and delegates in Congress, above six hundred dollars, or *derived from interest or dividends on stock, capital, or deposits in any bank, trust company, or savings institution, insurance, gas, bridge, express, telegraph, steamboat, ferry-boat, or railroad company, or corporation, or any bonds or other evidences of indebtedness of any railroad company or other corporation, which shall have been assessed and paid by said banks, trust companies, savings institutions, insurance, gas, bridge, telegraph, steamboat, ferry boat, express, or railroad companies, as aforesaid*, or derived from advertisements, or on any articles manufactured, upon which specific, stamp or ad valorem

duties shall have been directly assessed or paid, shall also be deducted; and the duty herein provided for shall be assessed and collected upon the income for the year ending the thirty-first day of December next preceding the time for levying and collecting said duty, that is to say, on the first day of May, eighteen hundred and sixty-three, and in each year thereafter: *Provided*, That upon such portion of said gains, profits, or income, whether subject to a duty as provided in this act of three per centum or of five per centum, which shall be derived from interest upon notes, bonds, or other securities of the United States, there shall be levied, collected, and paid a duty not exceeding one and one-half of one per centum, anything in this act to the contrary notwithstanding.

SEC. 92. *And be it further enacted*, That the duties on incomes herein imposed shall be due and payable on or before the thirtieth day of June, in the year eighteen hundred and sixty-three, and in each year thereafter until and including the year eighteen hundred and sixty-six and no longer; and to any sum or sums annually due and unpaid for thirty days after the thirtieth of June, as aforesaid, and for ten days after demand thereof by the collector, there shall be levied in addition thereto, the sum of five per centum on the amount of duties unpaid, as a penalty, except from the estates of deceased and insolvent persons; and if any person or persons, or party, liable to pay such duty, shall neglect or refuse to pay the same, the amount due shall be a lien in favor of the United States from the time it was so due until paid, with the interest, penalties, and costs that may accrue in addition thereto, upon all the property, and rights to prop-

erty, stocks, securities, and debts of every description from which the income upon which said duty is assessed or levied shall have accrued, or may or should accrue; and in default of the payment of said duty for the space of thirty days, after the same shall have become due, and be demanded, as aforesaid, said lien may be enforced by distraint upon such property, rights to property, stocks, securities, and evidences of debt, by whomsoever holden; and for this purpose the Commissioner of Internal Revenue, upon the certificate of the collector or deputy collector that said duty is due and unpaid for the space of ten days after notice duly given of the levy of such duty, shall issue a warrant in form and manner to be prescribed by said Commissioner of Internal Revenue, under the directions of the Secretary of the Treasury, and by virtue of such warrant there may be levied on such property, rights to property, stocks, securities, and evidences of debt, a further sum, to be fixed and stated in such warrant, over and above the said annual duty, interest, and penalty for non-payment, sufficient for the fees and expenses of such levy. And in all cases of sale, as aforesaid, the certificate of such sale by the collector or deputy collector of the sale, shall give title to the purchaser, of all right, title, and interest of such delinquent in and to such property, whether the property be real or personal; and where the subject of sale shall be stocks, the certificate of said sale shall be lawful authority and notice to the proper corporation, company, or association, to record the same on the books or records, in the same manner as if transferred or assigned by the person or party holding the same, to issue new certificates of stock therefor

in lieu of any original or prior certificates, which shall be void whether cancelled or not; and said certificates of sale of the collector or deputy collector, where the subject of sale shall be securities or other evidences of debt, shall be good and valid receipts to the person or party holding the same, as against any person or persons, or other party holding, or claiming to hold, possession of such securities or other evidences of debt.

SEC. 93. *And be it further enacted*, That it shall be the duty of all persons of lawful age, and all guardians and trustees, whether such trustees are so by virtue of their office as executors, administrators, or other fiduciary capacity, to make return in the list or schedule, as provided in this act, to the proper officer of internal revenue, of the amount of his or her income, or the income of such minors or persons as may be held in trust as aforesaid, according to the requirements hereinbefore stated, and in case of neglect or refusal to make such return, the assessor or assistant assessor shall assess the amount of his or her income, and proceed thereafter to collect the duty thereon in the same manner as is provided for in other cases of neglect and refusal to furnish lists or schedules in the general provisions of this act, where not otherwise incompatible, and the assistant assessor may increase the amount of the list or return of any party making such return, if he shall be satisfied that the same is understated: *Provided*, That any party, in his or her own behalf, or as guardian or trustee, as aforesaid, shall be permitted to declare, under oath or affirmation, the form and manner of which shall be prescribed by the Commissioner of Internal Revenue, that he or she was not possessed of an in-

come of six hundred dollars, liable to be assessed according to the provisions of this act, or that he or she has been assessed elsewhere and the same year for an income duty, under authority of the United States, and shall thereupon be exempt from an income duty; or, if the list or return of any party shall have been increased by the assistant assessor, in manner as aforesaid, he or she may be permitted to declare, as aforesaid, the amount of his or her annual income, or the amount held in trust, as aforesaid, liable to be assessed, as aforesaid, and the same so declared shall be received as the sum upon which duties are to be assessed and collected.

ACT OF MARCH 3D, 1863 (12 STAT. AT LARGE, PP. 718, 723). being Chap. LXXIV of the Acts of 1863, entitled "An Act to amend an Act entitled 'An Act to provide Internal Revenue to support the Government and pay Interest on the Public Debt,' approved July 1st, eighteen hundred and sixty-two, and for other Purposes."

SEC. 1. * * * That section ninety-one be amended by striking out the word "gas" wherever it occurs, and by striking out the words "or on any articles manufactured" after the word "advertisements."

That section ninety-three be amended so that in case of neglect or refusal to make the returns referred to in said section the proceedings thereafter for the assessment and collection of the duty shall be in the same manner as provided for in other cases of neglect.

SEC. 11. *And be it further enacted*, That in estimating the annual gains, profit, or income, of any person, under the act to which this act is an amendment, the amount actually paid by such person for the rent of the dwelling-house or estate on which he resides shall be first deducted from the gains, profit, or income of such person.

ACT OF JUNE 30TH, 1864 (13 STAT. AT LARGE, PP. 281–285), being Chapter CLXXI of the Acts of 1864, entitled "An Act to increase Duties on Imports, and for other Purposes."

SEC. 103. *And be it further enacted*, That every person, firm, company, or corporation owning or possessing, or having the care or management of, any railroad, canal, steamboat, ship, barge, canal-boat, or other vessel, or any stage-coach or other vehicle engaged or employed in the business of transporting passengers or property for hire, or in transporting the mails of the United States, or any canal, the water of which is used for mining purposes, shall be subject to and pay a duty of two and one-half per centum upon the gross receipts of such railroad, canal, steamboat, ship, barge, canal-boat, or other vessel, or such stage-coach or other vehicle: *Provided*, That the duty hereby imposed shall not be charged upon receipts for the transportation of persons or property, or mails, between the United States and any foreign port; and any person or persons, firms, companies, or corporations, owning, possessing, or having the care or management of any toll-road, ferry, or bridge, authorized by law to receive toll for the transit of passengers, beasts, carriages, teams, and freight of any description, over such toll road, ferry, or bridge, shall be subject to and pay a duty of three per centum on the gross amount of all their receipts of every description. But when the gross receipts of any such bridge or toll-road shall not exceed the amount necessarily expended to keep such bridge or road in repair, no tax shall be imposed on such receipts: *Provided*, That all

such persons, companies, and corporations shall have the right to add the duty or tax imposed hereby to their rates of fare whenever their liability thereto may commence, any limitations which may exist by law or by agreement with any person or company which may have paid or be liable to pay such fare to the contrary notwithstanding.

SEC. 104. *And be it further enacted*, That any person, firm, company, or corporation carrying on or doing an express business, shall be subject to and pay a duty of three per centum on the gross amount of all the receipts of such express business.

SEC. 105. *And be it further enacted*, That there shall be levied, collected, and paid a duty of one and a half of one per centum upon the gross receipts of premiums, or assessments for insurance from loss or damage by fire or by the perils of the sea, made by every insurance company, whether inland or marine or fire insurance company, and by every association or individual engaged in the business of insurance against loss or damage by fire or by the perils of the sea; and by every person, firm, company, or corporation, who shall issue tickets or contracts of insurance against injury to persons while travelling by land or water; and a like duty shall be paid by the agent of any foreign insurance company having an office or doing business within the United States; and that in the account or return to be rendered, they shall state the amount insured, renewed, or continued, the gross amount of premiums received and assessments collected, and the duties by law accruing thereon for the quarter then next preceding.

SEC. 107. *And be it further enacted*, That any person, firm, company, or corporation owning or possessing or having the care or management of any telegraphic line by which telegraphic despatches or messages are received or transmitted, shall be subject to, and pay a duty of, five per centum on the gross amount of all receipts of such person, firm, company, or corporation.

SEC. 110. *And be it further enacted*, That there shall be levied, collected, and paid a duty of one twenty-fourth of one per centum each month upon the average amount of the deposits of money, subject to payment by check or draft, or represented by certificates of deposit or otherwise, whether payable on demand or at some future day, with any person, bank, association, company or corporation engaged in the business of banking; and a duty of one twenty-fourth of one per centum each month as aforesaid, upon the average amount of the capital of any bank, association, company, or corporation, or person engaged in the business of banking beyond the amount invested in United States bonds; and a duty of one twelfth of one per centum each month upon the average amount of circulation issued by any bank, association, corporation, company, or person, including as circulation all certified checks and all notes and other obligations calculated or intended to circulate or to be used as money, but not including that in the vault of the bank, or redeemed and on deposit for said bank; and an additional duty of one-sixth of one per centum, each month, upon the average amount of such circulation, issued as aforesaid, beyond the amount of ninety per centum of the capital of any

such bank, association, corporation, company, or person, and upon any amount of such circulation, beyond the average amount of the circulation that had been issued as aforesaid by any such bank, association, corporation, company, or person, for the six months preceding the first day of July, eighteen hundred and sixty-four. And on the first Monday of August next, and of each month thereafter, a true and accurate return of the amount of circulation, of deposit, and of capital as aforesaid, for the previous month, shall be made and rendered in duplicate by each of such banks, associations, corporations, companies, or persons to the assessor of the district in which any such bank, association, corporation, or company may be located, or in which such person may reside, with a declaration annexed thereto, and the oath or affirmation of such person, or of the president or cashier of such bank, association, corporation, or company, in such form and manner as may be prescribed by the commissioner of internal revenue, that the same contains a true and faithful statement of the amount of circulation, deposits, and capital, as aforesaid, subject to duty as aforesaid, and shall transmit the duplicate of said return to the commissioner of internal revenue, and within twenty days thereafter shall pay to the said commissioner of internal revenue the duties hereinbefore prescribed upon the said amount of circulation, of deposits, and of capital, as aforesaid, and for any refusal or neglect to make or to render such return and payment as aforesaid, any such bank, association, corporation, company, or person so in default shall be subject to and pay a penalty of two hundred dollars, besides the additional penalty

and forfeitures in other cases provided in this act: and the amount of circulation, deposit, and capital, as aforesaid, in default of the proper return, shall be estimated by the assessor or assistant assessor of the district as aforesaid, upon the best information he can obtain; and every such penalty, together with the duties as aforesaid, may be recovered for the use of the United States in any court of competent jurisdiction. And in the case of banks with branches, the duty herein provided for shall be imposed upon the circulation of each branch, severally, and the amount of capital of each branch shall be considered to be the amount allotted to such branch; and so much of an act entitled "An act to provide ways and means for the support of the government," approved March three, eighteen hundred and sixty-three, as imposes any tax on banks, their circulation, capital, or deposits, other than is herein provided, is hereby repealed: *Provided*, That this section shall not apply to associations which are taxed under and by virtue of the act "to provide a national currency, secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof;" nor to any savings bank having no capital stock, and whose business is confined to receiving deposits and loaning the same on interest for the benefit of the depositors only, and which do no other business of banking: *And provided, further*, That any bank ceasing to issue notes for circulation, and which shall deposit in the treasury of the United States, in lawful money, the amount of its outstanding circulation, to be redeemed at par, under such regulations as the Secretary of the Treasury may prescribe, shall be exempt from any tax upon such circulation.

SEC. 116. *And be it further enacted*, That there shall be levied, collected, and paid annually upon the annual gains, profits, or income of every person residing in the United States, or of any citizen of the United States residing abroad, whether derived from any kind of property, rents, interests, dividends, salaries, or from any profession, trade, employment, or vocation, carried on in the United States or elsewhere, or from any other source whatever, except as hereinafter mentioned, if such annual gains, profits, or income, exceed the sum of six hundred dollars, a duty of five per centum on the excess over six hundred dollars and not exceeding five thousand dollars; and a duty of seven and one half of one per centum per annum on the excess over five thousand dollars and not exceeding ten thousand dollars; and a duty of ten per centum on the excess over ten thousand dollars. And the duty herein provided for shall be assessed, collected, and paid upon the gains, profits, or income for the year ending the thirty-first day of December next, preceding the time for levying, collecting, and paying said duty: *Provided*, That income derived from interest upon notes, bonds, and other securities of the United States, shall be included in estimating incomes under this section: *Provided, That only one deduction of six hundred dollars shall be made from the aggregate incomes of all the members of any family composed of parents and minor children, or husband and wife, except in cases where such separate income shall be derived from the separate and individual estate, gains, or labor of the wife or child: And provided, further*, That net profits realized by sales of real estate purchased within the year for which

income is estimated, shall be chargeable as income; and losses on sales of real estate purchased within the year, for which income is estimated, shall be deducted from the income of such year.

SEC. 117. *And be it further enacted*, That in estimating the annual gains, profits, or income of any person, all national, state, and municipal taxes, other than the national income tax, lawfully assessed within the year upon the property or sources of income of any person, as aforesaid, from which said annual gains, profits, or income is or should be derived, shall be deducted, in addition to six hundred dollars, from the gains, profits, or income of the person who has actually paid the same, whether owner, tenant, or mortgagor; also the salary or pay received for services in the civil, military, naval, or other service of the United States, including senators, representatives, and delegates in congress, above the rate of six hundred dollars per annum; *and there shall also be deducted the income derived from dividends on shares in the capital stock of any bank, trust company, savings institution, insurance, railroad, canal, turnpike, canal navigation, or slackwater company, and the interest on any bonds or other evidences of indebtedness of any such corporation or company, which shall have been assessed and the tax paid, as hereinafter provided;* also the amount paid by any person for the rent of the homestead used or occupied by himself or his family, and the rental value of any homestead used or occupied by any person, or by his family, in his own right or in the right of his wife, shall not be included and assessed as part of

the income of such person. In estimating the annual gains, profits, or income of any person, the interest over and above the amount of interest paid upon all notes, bonds, and mortgages, or other forms of indebtedness, bearing interest, whether due and paid or not, if good and collectible, shall be included and assessed as part of the income of such person for each year; and also all income or gains derived from the purchase and sale of stocks or other property, real or personal, and the increased value of live stock, whether sold or on hand, and the amount of sugar, wool, butter, cheese, pork, beef, mutton, or other meats, hay, and grain, or other vegetable or other productions of the estate of such person sold, not including any part thereof unsold or on hand during the year next preceding the thirty-first of December, shall be included and assessed as part of the income of such person for each year, AND THE GAINS AND PROFITS OF ALL COMPANIES, WHETHER INCORPORATED OR PARTNERSHIP, OTHER THAN THE COMPANIES SPECIFIED IN THIS SECTION, SHALL BE INCLUDED IN ESTIMATING THE ANNUAL GAINS, PROFITS, OR INCOME OF ANY PERSON ENTITLED TO THE SAME, WHETHER DIVIDED OR OTHERWISE. In estimating deductions from income, as aforesaid, when any person rents buildings, lands, or other property, or hires labor to carry on land, or to conduct any other business from which such income is actually derived, or pays interest upon any actual incumbrance thereon, the amount actually paid for such rent, labor, or interest shall be deducted; and also the amount paid out for usual or ordinary repairs, not exceeding the average paid

out for such purposes for the preceding five years, shall be deducted, but no deduction shall be made for any amount paid out for new buildings, permanent improvements, or betterments, made to increase the value of any property or estate: *Provided*, That in cases where the salary or other compensation paid to any person in the employment or service of the United States, shall not exceed the rate of six hundred dollars per annum, or shall be by fees, or uncertain or irregular in the amount or in the time during which the same shall have accrued or been earned, such salary or other compensation shall be included in estimating the annual gains, profits, or income of the person to whom the same shall have been paid, in such manner as the commissioner of internal revenue, under the direction of the Secretary of the Treasury, may prescribe.

SEC. 118. *And be it further enacted*, That it shall be the duty of all persons of lawful age, and all guardians and trustees, whether such trustees are so by virtue of their office as executors, administrators, or in other fiduciary capacity, to make a list or return under oath or affirmation, in such form and manner as may be prescribed by the commissioner of internal revenue, to the assistant assessor of the district in which he resides, of the amount of his or her income, or the income of such minors or persons as may be held in trust as aforesaid, according to the requirements hereinbefore mentioned, stating the sources from which said income is derived, whether from any kind of property, or the purchase and sale of property, rents, interest, dividends, salaries, or from any profession, trade, employment, or vocation, or otherwise. And

in case of neglect or refusal to make such return, the assessor or assistant assessor shall assess the amount of his or her income, and the duty thereon, in the same manner as is provided for in other cases of neglect and refusal to furnish lists or returns in the provisions of this act, where not otherwise incompatible; and the assistant assessor may increase the amount of the list or return, or of any party making such return, if he shall be satisfied that the same is understated: *Provided*, That any party, in his or her own behalf, or as guardian or trustee, as aforesaid, shall be permitted to declare, under oath or affirmation, the form and manner of which shall be prescribed by the commissioner of internal revenue, that he or she was not possessed of an income of six hundred dollars, liable to be assessed according to the provisions of this act, or may declare that he or she has been assessed elsewhere in the same year for, and has paid an income duty under authority of the United States, and shall thereupon be exempt from income duty in said district; or, if the list or return of any party shall have been increased by the assistant assessor, in manner as aforesaid, such party may be permitted to declare, under oath or affirmation, the amount of annual income, or the amount held in trust, as aforesaid, liable to be assessed, and the same, so declared, shall be received by such assistant assessor as true, and as the sum upon which duties are to be assessed and collected, except that the deductions claimed in such cases shall not be made or allowed until approved by the assistant assessor. But any person feeling aggrieved by the decision of the assistant

assessor in such cases, may appeal to the assessor of the district, and his decision thereon shall be final; and the form, time, and manner of proceedings shall be subject to rules and regulations to be prescribed by the commissioner of internal revenue.

SEC. 119. *And be it further enacted*, That the DUTIES on incomes herein imposed shall be levied on the first day of May, and be due and payable on or before the thirtieth day of June, in each year, until and including the year eighteen hundred and seventy, and no longer; and to any sum or sums annually due and unpaid for thirty days after the thirtieth of June, as aforesaid, and for ten days after demand thereof by the collector, there shall be levied in addition thereto the sum of ten per centum on the amount of duties unpaid, as a penalty, except from the estates of deceased and insolvent persons. And if any person liable to pay such duty shall neglect or refuse to pay the same, after such demand, the amount due shall be a lien in favor of the United States from the time it was due until paid, with the interest, penalties, and costs that may accrue in addition thereto, upon all the property and rights to property belonging to such person; and in default of the payment of said duty aforesaid, said lien may be enforced by distraint upon such property, rights to property, stocks, securities, and evidences of debt, by whomsoever holden; and for this purpose the collector, after demands duly given, as aforesaid, shall issue a warrant, in form and manner to be prescribed by the commissioner of internal revenue, under the directions of the Secretary of the Treasury, and by

virtue of such warrant there may be levied on such property, rights to property, stocks, securities, and evidences of debt, a further sum, to be fixed and stated in such warrant, over and above the said annual duty, interest and penalty for non-payment, sufficient for the fees, costs, and expenses of such levy. And in all cases of sale, as aforesaid, the certificate of such sale by the collector shall vest in the purchaser all right, title, and interest of such delinquent in and to such property, whether the property be real or personal; and where the subject of sale shall be stocks, the certificate of said sale shall be lawful authority and notice to the proper corporation, company, or association, to record the same on the books or records, in the same manner as if transferred or assigned by the person or party holding the same, to issue new certificates of stock therefor in lieu of any original or prior certificates, which shall be void whether cancelled or not. And said certificates of sale of the collector, where the subject of sale shall be securities or other evidences of debt, shall be good and valid receipts to the person holding the same, as against any person holding, or claiming to hold, possession of such securities or other evidences of debt.

SEC. 120. *And be it further enacted, That there shall be levied and collected a duty of five per centum on all dividends in scrip or money thereafter declared due, and whenever the same shall be payable, to stockholders, policy-holders, or depositors, as part of the earnings, income, or gains of any bank, trust company, savings institution, and of any fire, marine, life, inland insurance company, either stock or mutual, under whatever name or style known or called, in the*

United States or territories, whether specially incorporated or existing under general laws, and on all undistributed sums, or sums made or added during the year to their surplus or contingent funds; and said *banks, trust companies, savings institutions, and insurance companies shall pay the said duty, and are hereby authorized to deduct and withhold from all payments made on account of any dividends or sums of money that may be due and payable as aforesaid, the said duty of five per centum.* And a list or return shall be made and rendered to the assessor or assistant assessor in duplicate, and one of said lists or returns shall be transmitted, and the duty paid to the commissioner of internal revenue within thirty days after the time when any dividends or sums of money become due or payable as aforesaid; and said list or return shall contain a true and faithful account of the amount of *duties* as aforesaid; and there shall be annexed thereto a declaration of the president, cashier, or treasurer of the bank, trust company, savings institution, or insurance company, under oath or affirmation, in form and manner as may be prescribed by the commissioner of internal revenue, that the same contains a true and faithful account of the duties as aforesaid. And for any default in the making or rendering of such list or return, with such declaration annexed, the bank, trust company, savings institution, or insurance company, making such default, shall forfeit as a penalty the sum of one thousand dollars; and in case of any default in making or rendering said list or return, or of any default in the payment of the duty as required, or any part thereof, the assessment and

collection of the duty and penalty shall be in accordance with the general provisions of law in other cases of neglect and refusal: *Provided, That the duty upon the dividends of life insurance companies shall not be deemed due or to be collected* UNTIL *such dividends shall be payable by such companies, nor shall the portion of* PREMIUMS *returned by* MUTUAL *life insurance companies* to their policy holders be considered as dividends or profits under this act.

SEC. 121. *And be it further enacted*, That any bank legally authorized to issue notes as circulation, which shall neglect or omit to make dividends or additions to its surplus or contingent fund as often as once in six months, shall make a list or return in duplicate, under oath or affirmation of the president or cashier, to the assessor or assistant assessor of the district in which it is located, on the first day of January and July in each year, or within thirty days thereafter, of the amount of profits which have accrued or been earned and received by said bank during the six months next preceding said first days of January and July; and shall present one of said lists or returns and pay to the collector of the district a duty of five per centum on such profits; and in case of default to make such list or return and payment within the thirty days as aforesaid, shall be subject to the provisions of the foregoing section of this act: *Provided*, That when any dividend is made which includes any part of the surplus or contingent fund of any bank, trust company, savings institution, insurance or railroad company, which has been assessed and the duty paid thereon, the amount of duty so paid on that portion of the sur-

plus or contingent fund may be deducted from the duty on such dividend.

SEC. 122. *And be it further enacted*, That any *railroad, canal, turnpike, canal navigation*, or *slackwater company indebted* for any money for which bonds or other evidence of indebtedness have been issued, payable in one or more years after date, *upon which interest is stipulated to be paid, or coupons representing the interest, or any such company that may have declared any dividend in scrip, or money due or payable to its stockholders*, as part of the earnings, profits, income, or gains of such company, and all profits of such company carried to the account of any fund, or used for construction, *shall be subject to and pay a duty of five per centum on the amount of all such interest, or coupons, dividends, or profits, whenever the same shall be payable; and said companies are hereby authorized to deduct and withhold from all payments, on account of any interest, or coupons and dividends due and payable as aforesaid, the duty of five per centum; and the payment of the amount of said duty so deducted from the interest, or coupons, or dividends, and certified by the president or treasurer of said company, shall discharge said company from that amount of the dividend, or interest, or coupon, on the bonds or other evidences of their indebtedness so held by any person or party whatever*, except where said companies may have contracted otherwise. And a list or return shall be made and rendered to the assessor or assistant assessor in duplicate, and one of said lists or returns shall be transmitted and the duty paid to the commissioner of internal revenue within

thirty days after the time when said interest, coupons, or dividends become due and payable, and as often as every six months; and said list or return shall contain a true and faithful account of the amount of the duty, and there shall be annexed thereto a declaration of the president or treasurer of the company, under oath or affirmation, in form and manner as may be prescribed by the commissioner of internal revenue, that the same contains a true and faithful account of said duty. And for any default in making or rendering such list or return, with the declaration annexed, or of the payment of the duty as aforesaid, the company making such default shall forfeit as a penalty the sum of one thousand dollars; and in case of any default in making or rendering said list or return, or of the payment of the duty, or any part thereof, as aforesaid, the assessment and collection of the duty and penalty shall be made according to the provisions of law in other cases of neglect or refusal.

SEC. 123. *And be it further enacted*, That there shall be levied, collected, and paid, on all salaries of officers, or payments for services to persons in the civil, military, naval, or other employment or service of the United States, including senators and representatives and delegates in congress, when exceeding the rate of six hundred dollars per annum, a duty of five per centum on the excess above the said six hundred dollars; and it shall be the duty of all paymasters, and all disbursing officers, under the government of the United States, or in the employ thereof, when making any payments to officers and persons as aforesaid, or upon settling and adjusting the accounts of such officers and persons, to

deduct and withhold the aforesaid duty of five per centum, and shall, at the same time, make a certificate stating the name of the officer or person from whom such deduction was made, and the amount thereof, which shall be transmitted to the office of the commissioner of internal revenue, and entered as part of the internal duties; and the pay-roll, receipts, or account of officers or persons paying such duty, as aforesaid, shall be made to exhibit the fact of such payment. And it shall be the duty of the several auditors of the Treasury Department, when auditing the accounts of any paymaster or disbursing officer, or when settling or adjusting the accounts of any such officer, to require evidence that the duties or taxes mentioned in this section have been deducted or paid over to the commissioner of internal revenue: *Provided*, That payments of prize money shall be regarded as income from salaries, and the duty thereon shall be adjusted and collected in like manner.

ACT OF MARCH 3D, 1865 (13 STAT. AT LARGE, PP. 479–481), being Chapter LXXVIII of the Laws of 1865, entitled, "An Act to amend an Act entitled 'An Act to provide Internal Revenue to support the Government, to pay Interest on the Public Debt, and for other Purposes,' approved June 30th, eighteen hundred and sixty-four."

That section one hundred and sixteen be amended by striking out all after the enacting clause, and inserting in lieu thereof the following: "That there shall be levied, collected, and paid annually upon the annual gains, profits, and income of every person residing in the United States, or of any citizen of the United States residing abroad, whether derived from any kind of property, rents, interests, dividends, or salaries, or from any profession, trade, employment, or vocation, carried on in the United States or elsewhere, or from any other source whatever, a duty of *five per centum* on the excess over *six hundred dollars* and not exceeding five thousand dollars, and a duty of *ten per centum* on the *excess over five thousand dollars*; and in ascertaining the income of any person liable to an income tax, the amount of income received from institutions whose officers, as required by law, withhold a per centum of the dividends made by such institutions and pay the same to the commissioner of internal revenue, or other officer authorized to receive the same, shall be included; and the amount so withheld shall be deducted from the tax which otherwise would be assessed upon such person. And the duty herein provided for shall be assessed, collected, and paid upon the gains, profits,

and income for the year ending the thirty-first day of December next preceding the time for levying, collecting, and paying said duty: *Provided*, That incomes derived from interest upon notes, bonds, and other securities of the United States, and also all premiums on gold and coupons shall be included in estimating incomes under this section. *Provided, further, That only one deduction of six hundred dollars shall be made from the aggregate incomes of all the members of any family composed of parents and minor children, or husband and wife: And provided, further*, That net profits realized by sales of real estate purchased within the year for which income is estimated, shall be chargeable as income; and losses on sales of real estate purchased within the year for which income is estimated, shall be deducted from the income of such year."

That section one hundred and seventeen be amended by striking out all after the enacting clause, and inserting in lieu thereof the following: "That in estimating the annual gains, profits, and income of any person, all national, state, county, and municipal taxes paid within the year shall be deducted from the gains, profits, or income of the person who has actually paid the same, whether owner, tenant, or mortgagor; also the salary or pay received for services in the civil, military, naval, or other service of the United States, including senators, representatives, and delegates in congress, above the rate of six hundred dollars per annum; also the amount paid by any person for the rent of the homestead used or occupied by himself or his family, and the rental value of any homestead used or occupied by any person or by

his family, in his own right or in the right of his wife, shall not be included and assessed as part of the income of such person. In estimating the annual gains, profits, or income of any person, the interest received or accrued upon all notes, bonds, and mortgages, or other forms of indebtedness bearing interest, whether paid or not, if good and collectible, less the interest paid by or due from such person, shall be included and assessed as part of the income of such person for each year; and also all income or gains derived from the purchase and sale of stocks or other property, real or personal, and of live stock, and the amount of live stock, sugar, wool, butter, cheese, pork, beef, mutton, or other meats, hay and grain, or other vegetable or other productions, being the growth or produce of the estate of such person sold, not including any part thereof unsold or on hand during the year next preceding the thirty-first of December, until the same shall be sold, shall be included and assessed as part of the income of such person for each year, *and his share of the gains and profits of all companies, whether incorporated or partnership, shall be included in estimating the annual gains, profits, or income of any person entitled to the same, whether divided or otherwise.* In estimating deductions from income, as aforesaid, when any person rents buildings, lands, or other property, or hires labor to cultivate land, or to conduct any other business from which such income is actually derived, or pays interest upon any actual incumbrance thereon, the amount actually paid for such rent, labor, or interest, shall be deducted; and also the amount paid out for usual or ordinary repairs, not exceed-

ing the average paid out for such purposes for the preceding five years, shall be deducted, but no deduction shall be made for any amount paid out for new buildings, permanent improvements, or betterments, made to increase the value of any property or estate: *Provided*, That in cases where the salary or other compensation paid to any person in the employment or service of the United States shall not exceed the rate of six hundred dollars per annum, or shall be by fees, or uncertain or irregular in the amount or in the time during which the same shall have accrued or been earned, such salary or other compensation shall be included in estimating the annual gains, profits, or income of the person to whom the same shall have been paid, in such manner as the commissioner of internal revenue, under the direction of the Secretary of the Treasury, may prescribe."

That section one hundred and eighteen be amended by striking out all after the enacting clause, and inserting in lieu thereof the words, "That it shall be the duty of all persons of lawful age to make and render a list or return, in such form and manner as may be prescribed by the commissioner of internal revenue, to the assistant assessor of the district in which they reside, of the amount of their income, gains, and profits, as aforesaid; and all guardians and trustees, whether as executors, administrators, or in any other fiduciary capacity, shall make and render a list or return, as aforesaid, to the assistant assessor of the district in which such guardian or trustee resides, of the amount of income, gains, and profits of any minor or person for whom they act as guardian or trustee; and the assistant assessor shall require every list

or return to be verified by the oath or affirmation of the party rendering it, and may increase the amount of any list or return, if he has reason to believe that the same is understated; and in case any person, guardian, or trustee shall neglect or refuse to make and render such list or return, or shall render a false or fraudulent list or return, it shall be the duty of the assessor or the assistant assessor to make such list, according to the best information he can obtain, by the examination of such person, and his books and accounts, or any other evidence, and to add twenty-five per centum as a penalty to the amount of the duty due on such list in all cases of wilful neglect or refusal to make and render a list or return, and, in all cases of a false or fraudulent list or return having been rendered, to add one hundred per centum, as a penalty, to the amount of duty ascertained to be due, the duty and the additions thereto as penalty to be assessed and collected in the manner provided for in other cases of wilful neglect or refusal to render a list or return, or of rendering a false or fraudulent return: *Provided*, That any party, in his or her own behalf, or as guardian or trustee, shall be permitted to declare, under oath or affirmation, the form and manner of which shall be prescribed by the commissioner of internal revenue, that he or she, or his or her ward or beneficiary, was not possessed of an income of six hundred dollars, liable to be assessed according to the provisions of this act; or may declare that he or she has been assessed and paid an income duty elsewhere in the same year, under authority of the United States, upon his or her gains and profits, as prescribed by law, and if the assistant assessor

shall be satisfied of the truth of the declaration, shall thereupon be exempt from income duty in said district; or if the list or return of any party shall have been increased by the assistant assessor, such party may exhibit his books and accounts, and be permitted to prove and declare, under oath or affirmation, the amount of annual income liable to be assessed; but such oaths and evidence shall not be considered as conclusive of the facts, and no deductions claimed in such cases shall be made or allowed until approved by the assistant assessor. Any person feeling aggrieved by the decision of the assistant assessor in such cases may appeal to the assessor of the district, and his decision thereon, unless reversed by the commissioner of internal revenue, shall be final, and the form, time, and manner of proceedings shall be subject to rules and regulations to be prescribed by the commissioner of internal revenue."

That section one hundred and nineteen be amended by striking out the words "for thirty days," and after the words "for ten days after," inserting the words "notice and."

That section one hundred and twenty be amended by striking out, at the end thereof, the word "act," and inserting in lieu thereof the word "section."

ACT OF MARCH 10, 1866 (14 STAT. AT LARGE, PP. 4, 5), being Chapter XV of the Laws of 1866, entitled, "An Act to declare the meaning of certain parts of the Internal Revenue Act, approved June thirty, eighteen hundred and sixty-four, and for other purposes."

That in section one hundred and twenty of the act entitled "An act to provide internal revenue to support the Government, to pay interest on the public debt and for other purposes," approved June thirty, eighteen hundred and sixty-four, the words: "all dividends in scrip, or moneys thereafter declared due, and whenever the same shall be payable, to stockholders, policy-holders or depositors," are hereby declared to mean all dividends in scrip or moneys wherever payable, and all stockholders, policy-holders, depositors, or parties whatsoever, including non-residents, whether citizens or aliens.

SEC. 2. *And be it further enacted*, That in section one hundred and twenty-two of said act the word "stockholders" is hereby declared to mean all persons or parties whatsoever that are or may be stockholders, including non-residents, whether citizens or aliens; and the words "all such interest or coupons, dividends or profits, whenever the same shall be payable," are hereby declared to apply to all such interest or coupons, dividends or profits wherever the same are or may be payable, and to whatsoever party or person the same are or may be payable, including non-residents, whether citizens or aliens.

ACT OF JULY 13TH, 1866 (14 STAT. AT LARGE, PP. 137–140), being Chapter CLXXXIV of the Acts of 1866, entitled, "An Act to reduce Internal Taxation and to amend an Act entitled, 'An Act to provide Internal Revenue to support the Government, to pay Interest on the Public Debt, and for other Purposes,' approved June thirtieth, eighteen hundred and sixty-four, and Acts amendatory thereof."

SEC. 9. * * * That section one hundred and sixteen be amended by inserting after the words "on the excess over five thousand dollars," the following: and a like tax shall be levied, collected, and paid annually upon the gains, profits, and income of every business, trade, or profession carried on in the United States by persons residing without the United States, not citizens thereof.

That section one hundred and nineteen be amended by striking out all after the enacting clause and inserting in lieu thereof the following: That the taxes on incomes herein imposed shall be levied on the first day of May, and be due and payable on or before the thirtieth day of June, in each year, until and including the year eighteen hundred and seventy, and no longer; and to any sum or sums annually due and unpaid after the thirtieth of June, as aforesaid, and for ten days after notice and demand thereof by the collector, there shall be levied, in addition thereto, the sum of ten per centum on the amount of duties unpaid, as a penalty, except from the estates of deceased or insolvent persons.

That section one hundred and twenty be amended by striking out all after the enacting

clause and inserting in lieu thereof the following: That there shall be levied and collected a tax of *five per centum* on all *dividends* in *scrip* or *money* thereafter declared due, *wherever and whenever the same shall be payable, to stockholders, policy holders, or depositors or parties whatsoever*, including non-residents, whether citizens or aliens, *as part of the earnings, income, or gains of* ANY BANK, *trust company*, SAVINGS INSTITUTION, AND of any *fire, marine, life, inland insurance company*, EITHER STOCK OR MUTUAL, *under whatever name or style known or called, in the United States or Territories*, whether specially incorporated or existing under general laws, and on all undistributed sums, or sums made or added during the year to their surplus or contingent funds; *and said banks, trust companies, savings institutions, and insurance companies shall pay the said tax, and are hereby authorized to deduct and withhold from all payments made on account of any dividends or sums of money that may be due and payable as aforesaid the said tax of five per centum.* And a list or return shall be made and rendered to the assessor or assistant assessor on or before the tenth day of the month following that in which any dividends or sums of money become due or payable as aforesaid; and said list or return shall contain a true and faithful account of the amount of taxes as aforesaid; and there shall be annexed thereto a declaration of the president, cashier, or treasurer of the bank, trust company, savings institution, or insurance company, under oath or affirmation in form and manner as may be prescribed by the commissioner of internal revenue, that the same contains a true and faithful account

of the taxes as aforesaid. And for any default in the making or rendering of such list or return, with such declaration annexed, the bank, trust company, savings institution, or insurance company making such default, shall forfeit as a penalty the sum of one thousand dollars; and in case of any default in making or rendering said list or return, or of any default in the payment of the tax as required, or any part thereof, the assessment and collection of the tax and penalty shall be in accordance with the general provisions of law in other cases of neglect and refusal: *Provided, That the tax upon the dividends of life insurance companies shall not be deemed due until such dividends are payable; nor shall the portion of* PREMIUMS RETURNED *by mutual life insurance companies to their policy holders, nor the annual or semi-annual* INTEREST *allowed or paid to the depositors in savings banks or savings institutions, be considered as* DIVIDENDS.

That section one hundred and twenty-two be amended by striking out all after the enacting clause and inserting in lieu thereof the following: That any *railroad, canal, turnpike, canal navigation, or slack water company, indebted* for any money for which bonds or other evidence of indebtedness have been issued, payable in one or more years after date, upon which interest is stipulated to be paid, or coupons representing the interest, *or any such company that may have declared any dividend in scrip or money due or payable to its stockholders*, including non-residents, whether citizens or aliens, as part of the earnings, profits, income, or gains of such company, and all profits of such company carried to

the account of any fund, or used for construction, shall be subject to and pay a tax of *five per centum on the amount of all such interest, or coupons, dividends, or profits*, whenever and wherever the same shall be payable, and to whatsoever party or person the same may be payable, including non-residents, whether citizens or aliens; and said *companies are hereby authorized to* DEDUCT *and withhold from all payments on account of any interest, or coupons, and dividends, due and payable as aforesaid, the tax of five per centum; and the payment of the amount* of said tax so deducted from the interest, or coupons, or dividends, and certified by the president or treasurer of said company, *shall discharge said company from that amount of the dividend, or interest, or coupon* on the bonds of other evidences of their indebtedness so held by any person or party whatever, except where said companies may have contracted otherwise. And a list or return shall be made and rendered to the assessor or assistant assessor on or before the tenth day of the month following that in which said interest, coupons, or dividends become due and payable, and as often as every six months; and said list or return shall contain a true and faithful account of the amount of tax, and there shall be annexed thereto a declaration of the president or treasurer of the company, under oath or affirmation in form and manner as may be prescribed by the commissioner of internal revenue, that the same contains a true and faithful account of said tax. And for any default in making or rendering such list or return, with the declaration annexed, or of the payment of the tax as aforesaid, the company making such default shall forfeit as

a penalty the sum of one thousand dollars: and in case of any default in making or rendering said list or return, or of the payment of the tax or any part thereof, as aforesaid, the assessment and collection of the tax and penalty shall be made according to the provisions of law in other cases of neglect or refusal.

That section one hundred and twenty-two be further amended by adding thereto the following proviso: *Provided*, That whenever any of the companies mentioned in this section shall be unable to pay the interest on their indebtedness, and shall in fact fail to pay such interest, *that* in such cases the tax levied by this section shall not be paid to the United States until said company resume the payment of interest on their indebtedness.

That section one hundred and twenty-three be amended by striking out all after the enacting clause and inserting in lieu thereof the following: That there shall be levied, collected, and paid on all salaries of officers, or payments for services to persons in the civil, military, naval, or other employment or service of the United States, including senators and representatives and delegates in Congress, when exceeding the rate of six hundred dollars per annum, a tax of five per centum on the excess above the said six hundred dollars, and a tax of ten per cent. on the excess over five thousand dollars; and it shall be the duty of all paymasters and all disbursing officers, under the government of the United States, or persons in the employ thereof, when making any payment to any officers or persons as aforesaid, or upon settling and adjusting the accounts of such officers or persons, to deduct and withhold the aforesaid

tax, and they shall, at the same time, make a certificate stating the name of the officer or person from whom such deduction was made, and the amount thereof, which shall be transmitted to the office of the commissioner of internal revenue, and entered as part of the internal tax; and the pay-roll, receipts, or account of officers or persons paying such tax, as aforesaid, shall be made to exhibit the fact of such payment. And it shall be the duty of the several auditors of the Treasury Department, when auditing the accounts of any paymaster or disbursing officer, or any officer withholding his salary from moneys received by him, or when settling or adjusting the accounts of any such officer, to require evidence that the taxes mentioned in this section have been deducted and paid over to the commissioner of internal revenue, or other officer authorized to receive the same: *Provided*, That payments of prize money shall be regarded as income from salaries, and the tax thereon shall be adjusted and collected in like manner: *Provided further*, That this section shall not apply to payments made to mechanics or laborers employed upon public works.

ACT OF MARCH 2ND, 1867 (14 STAT. AT LARGE, PP. 477–480), being Chapter CLXIX of the Acts of 1867, entitled, "An Act to amend existing Laws relating to Internal Revenues, and for other Purposes."

SEC. 13. *And be it further enacted*, That the act entitled "An act to provide internal revenue to support the government, to pay interest on the public debt, and for other purposes," approved June thirty, eighteen hundred and sixty-four, and as subsequently amended, be further amended as follows, namely:—

Income.—That section one hundred and sixteen be amended by striking out all after the enacting clause and inserting, in lieu thereof, as follows: That there shall be levied, collected, and paid annually upon the gains, profits, and income of every person residing in the United States, or of any citizen of the United States residing abroad, whether derived from any kind of property, rents, interest, dividends, or salaries, or from any profession, trade, employment, or vocation, carried on in the United States, or elsewhere, or from any other source whatever, *a tax of five per centum* on the amount so derived *over one thousand dollars*, and a like tax shall be levied, collected, and paid annually upon the gains, profits, and income of every business, trade, or profession carried on in the United States by persons residing without the United States, and not citizens thereof. And the tax herein provided for shall be assessed, collected, and paid upon the gains, profits, and income for the year ending the thirty-first day of De-

cember next preceding the time for levying, collecting, and paying said tax.

That section one hundred and seventeen be amended by striking out all after the enacting clause and inserting, in lieu thereof, the following: That, in estimating the gains, profits, and income of any person, there shall be included all income derived from interest upon notes, bonds, and other securities of the United States; profits realized within the year from sales of real estate purchased within the year or within two years previous to the year for which income *was* [is] estimated; interest received or accrued upon *old* [all] notes, bonds, and mortgages, or other forms of indebtedness bearing interest, whether paid or not, if good and collectible, less the interest which has become due from said person during the year; the amount of all premium on gold and coupons; the amount of sales of live stock, sugar, wool, butter, che[e]se, pork, beef, mutton, or other meats, hay and grain, or other vegetable or other productions, being the growth or produce of the estate of such person, *not including any part thereof consumed directly by the family;* all other gains, profits, and income derived from any source whatever, except the rental value of any homestead used or occupied by any person or by his family in his own right or in the right of his wife; *and the share of any person of the gains and profits of all companies, whether incorporated or partnership, who would be entitled to the same, if divided, whether divided or otherwise, except the amount of income received from institutions or corporations whose officers, as required by law, withhold a per centum of the dividends made by such institutions,* and pay the same

to the officer authorized to receive the same; and except that portion of the salary or pay received for services in the civil, military, naval, or other service of the United States, including senators, representatives, and delegates in Congress, from which the tax has been deducted. And in addition to one thousand dollars exempt from income tax, as hereinbefore provided, all national, State, county, and municipal taxes paid within the year shall be deducted from the gains, profits, or income of the person who has actually paid the same, whether such person be owner, tenant, or mortgagor; losses actually sustained during the year arising from fires, ship-wreck, or incurred in trade, and debts ascertained to be worthless, but excluding all estimated depreciation of values and losses within the year on sales of real estate purchased two years previous to the year for which income is estimated; the amount actually paid for labor or interest by any person who rents lands or hires labor to cultivate land, or who conducts any other business from which income is actually derived; the amount actually paid by any person for the rent of the house or premises occupied as a residence for himself or his family; the amount paid out for usual or ordinary repairs: *Provided*, That no deduction shall be made for any amount paid out for new buildings, permanent improvements or betterments, made to increase the value of any property or estate: *And provided, further, That only one deduction of one thousand dollars shall be made from the aggregate income of all the members of any family, composed of one or both parents, and one or more minor children, or husband and wife;* that guardians

shall be allowed to make such deduction in favor of each and every ward, except that in case where two or more wards are comprised in one family, and have joint property interest, only one deduction shall be made in their favor: *And provided, further*, That in cases where the salary or other compensation paid to any person in the employment or service of the United States shall not exceed the rate of one thousand dollars per annum, or shall be by fees, or uncertain or irregular in the amount or in the time during which the same shall have accrued or been earned, such salary or other compensation shall be included in estimating the annual gains, profits, or income of the person to whom the same shall have been paid.

That section one hundred and eighteen be amended by striking out all after the enacting clause and inserting, in lieu thereof, the following: That it shall be the duty of all persons of lawful age to make and render a list or return, on or before the day prescribed by law, in such form and manner as may be prescribed by the commissioner of internal revenue, to the assistant assessor of the district in which they reside, of the amount of their income, gains, and profits, as aforesaid; and all guardians and trustees, executors and administrators, or any person acting in any other fiduciary capacity, shall make and render a list or return, as aforesaid, to the assistant assessor of the district in which such person acting in a fiduciary capacity resides, of the amount of income, gains, and profits of any minor or person for whom they act; and the assistant assessor shall require every list or return to be verified by the

oath or affirmation of the party rendering it, and may increase the amount of any list or return, if he has reason to believe that the same is understated; and in case any such person shall neglect or refuse to make and render such list or return, or shall render a false or fraudulent list or return, it shall be the duty of the assessor or the assistant assessor to make such list, according to the best information he can obtain, by the examination of such person, or his books or accounts, or any other evidence, and to add fifty per centum as a penalty to the amount of the tax due on such list in all cases of wilful neglect or refusal to make and render a list or return; and, in all cases of a false or fraudulent list or return having been rendered, to add one hundred per centum, as a penalty, to the amount of tax ascertained to be due, the tax and the additions thereto as a penalty to be assessed and collected in the manner provided for in other cases of wilful neglect or refusal to render a list or return, or of rendering a false and fraudulent return: *Provided*, That any party, in his or her own behalf, or as such fiduciary, shall be permitted to declare, under oath or affirmation, the form and manner of which shall be prescribed by the commissioner of internal revenue, that he or she, or his or her ward or beneficiary was not possessed of an income of one thousand dollars, liable to be assessed according to the provisions of this act; or may declare that he or she has been assessed and paid an income tax elsewhere in the same year, under authority of the United States, upon his or her income, gains, and profits, as prescribed by law; and if the assistant assessor shall be satisfied of the truth of the declaration, shall thereupon be ex-

empt from income tax in the said district: or if the list or return of any party shall have been increased by the assistant assessor, such party may exhibit his books and accounts, and be permitted to prove and declare, under oath or affirmation, the amount of income liable to be assessed; but such oaths and evidence shall not be considered as conclusive of the facts, and no deductions claimed in such cases shall be made or allowed until approved by the assistant assessor. Any person feeling aggrieved by the decision of the assistant assessor in such cases may appeal to the assessor of the district, and his decision thereon, unless reversed by the commissioner of internal revenue, shall be final, and the form, time, and manner of proceedings shall be subject to rules and regulations to be prescribed by the commissioner of internal revenue: *Provided further*, That no penalty shall be assessed upon any person for such neglect or refusal, or for making or rendering a false or fraudulent return, except after reasonable notice of the time and place of hearing, to be regulated by the commissioner of internal revenue, so as to give the person charged an opportunity to be heard.

That section one hundred and nineteen be amended by striking out all after the enacting clause and inserting, in lieu thereof, the following: That the taxes on incomes herein imposed shall be levied on the first day of March, and be due and payable on or before the thirtieth day of April, in each year, until and including the year eighteen hundred and seventy, and no longer; and to any sum or sums annually due and unpaid after the t[h]irtieth of April, as aforesaid, and for ten days after notice and demand thereof by the collector,

there shall be levied in addition thereto the sum of five per centum on the amount of taxes unpaid and interest at the rate of one per centum per month upon said tax from the time the same became due, as a penalty, except from the estates of deceased, insane, or insolvent persons: *Provided*, That the tax on incomes for the year eighteen hundred and sixty-six shall be levied on the day this takes effect.

That section one hundred and twenty-three be amended by striking out all after the enacting clause and inserting, in lieu thereof, the following: That there shall be levied, collected, and paid on all salaries of officers, or payments for services to persons in the civil, military, naval or other employment or service of the United States, including senators and representatives and delegates in Congress, when exceeding the rate of one thousand dollars per annum, a tax of five per centum on the excess above the said one thousand dollars; and it shall be the duty of all paymasters and all disbursing officers, under the government of the United States, or persons in the employ thereof, when making any payment to any officers or persons as aforesaid, whose compensation is determined by a fixed salary, or upon settling or adjusting the accounts of such officers or persons to deduct and withhold the aforesaid tax of five per centum; and the pay-roll, receipts, or account of officers or persons paying such tax as aforesaid shall be made to exhibit the fact of such payment. And it shall be the duty of the accounting officers of the Treasury Department, when auditing the accounts of any paymaster or disbursing officer, or any officer withholding his salary from moneys

received by him, or when settling or adjusting the accounts of any such officer, to require evidence that the taxes mentioned in this section have been deducted and paid over to the treasurer of the United States, or other officer authorized to receive the same: *Provided*, That payments of prize money shall be regarded as income from salaries, and the tax thereon shall be adjusted and collected in like manner: *Provided further*, That this section shall not apply to payments made to mechanics or laborers employed upon public works: *And provided further*, That in case it should become necessary for showing the true receipts of the government under the operations of this section upon the books of the Treasury Department, the requisite amount may be carried from unappropriated moneys in the treasury to the credit of said account; and this section shall take effect upon salary and compensation for the month of March, eighteen hundred and sixty-seven.

ACT OF JULY 14TH, 1870 (16 STAT. AT LARGE, PP. 256–261), being Chapter CCLV of the Acts of 1870, entitled, An "Act to reduce Internal Taxes, and for other Purposes."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That on and after the first day of May, eighteen hundred and seventy-one, the special taxes imposed by the seventy-ninth section of the act entitled "An act to provide internal revenue to support the government, to pay interest on the public debt, and for other purposes," approved June thirty, eighteen hundred and sixty-four, as amended by section nine of the internal revenue act approved July thirteen, eighteen hundred and sixty-six, and as amended by section two of the internal revenue act approved March two, eighteen hundred and sixty-seven, be, and the same are hereby, repealed; but this act shall not be held to repeal or in any way affect the special tax on brewers imposed by said section, or the special taxes imposed by the act approved July twenty, eighteen hundred and sixty-eight, entitled "An Act imposing taxes on distilled spirits and tobacco, and for other purposes," or the acts amendatory thereof.

* * * * *

SEC. 6. *And be it further enacted*, That there shall be levied and collected annually, as hereinafter provided, for the years eighteen hundred and seventy, and eighteen hundred and seventy-one, and no longer, a tax of *two and one half per centum upon the gains, profits, and income* of every person residing in the United States, and of every citizen of the United States resid-

ing abroad, derived from any source whatever, whether within or without the United States, except as hereafter provided, and a like tax annually upon the gains, profits, and income derived from any business, trade, or profession carried on in the United States by any person residing without the United States, and not a citizen thereof, or from rents of real estate within the United States owned by any person residing without the United States, and not a citizen thereof.

SEC. 7. *And be it further enacted, That in estimating the gains, profits, and income of any person,* there *shall be included* all income derived from any kind of property, rents, interest received or accrued upon all notes, bonds, and mortgages, or other forms of indebtedness bearing interest, whether paid or not, if good and collectible, interest upon notes, bonds, or other securities of the United States; and the amount of all premium on gold and coupons; the gains, profits, and income of any business, profession, trade, employment, office, or vocation; including any amount received as salary or pay for services in the civil, military, naval, or other service of the United States, or as senator, representative or delegate in Congress; except that portion thereof from which, under authority of acts of Congress previous hereto, a tax of five per centum shall have been withheld; *the share of any person of the gains and profits, whether divided or not, of all companies or partnerships, but not including the amount received from any corporations whose officers, as authorized by law, withhold and pay as taxes a per centum of the dividends made, and of interest or coupons paid by such corporations;* profits realized within the year from

sales of real estate purchased within two years previous to the year for which income is estimated; the amount of sales of live stock, sugar, wool, butter, cheese, pork, beef, mutton, or other meats, hay and grain, fruits, vegetables, or other productions, being the growth or produce of the estate of such person, *but not including any part thereof consumed directly by the family;* and all other gains, profits, and income drawn from any source whatever, but not including the rental value of the homestead used or occupied by any person, or by his family.

SEC. 8. *And be it further enacted*, That military or naval pensions allowed to any person under the laws of the United States, and the sum of two thousand dollars of the gains, profits, and income of any person, shall be exempt from said income tax, in the manner hereinafter provided. Only one deduction of two thousand dollars shall be made from the aggregate income of all the members of any family composed of one or both parents and one or more minor children, or of husband and wife; but when a wife has by law a separate income, beyond the control of her husband, and is living separate and apart from him, such deduction shall then be made from her income, gains, and profits; and guardians and trustees shall be allowed to make the deduction in favor of each ward or beneficiary except that in a case of two or more wards or beneficiaries comprised in one family, having joint property interest, only one deduction shall be made in their favor. For the purpose of allowing said deduction from the income of any religious or social community holding all their property and the income therefrom jointly and in common, each

five of the persons composing such society, and any remaining fractional number of such persons less than five over such groups of five, shall be held to constitute a family, and a deduction of two thousand dollars shall be allowed for each of said families. Any taxes on the incomes, gains, and profits of such societies, now due and unpaid, shall be assessed and collected according to this provision, except that the deduction shall be only one thousand dollars for any year prior to eighteen hundred and seventy.

SEC. 9. *And be it further enacted*, That in addition to the exemptions provided in the preceding section, there shall be deducted from the gains, profits, and income of any person all national, State, county, and municipal taxes paid by him within the year, whether such person be owner, tenant, or mortgagor; all his losses actually sustained during the year arising from fires, floods, shipwreck, or incurred in trade, and debts ascertained to be worthless, but excluding all estimated depreciation of values; the amount of interest paid during the year, and the amount paid for rent or labor to cultivate land, or to conduct any other business from which income is derived; the amount paid for the rent of the house or premises occupied as a residence for himself or his family, and the amount paid out for usual and ordinary repairs. No deduction shall be made for any amount paid out for new buildings, permanent improvements, or betterments made to increase the value of any property or estate.

SEC. 10. *And be it further enacted*, That the tax hereinbefore provided shall be assessed upon the gains, profits, and income for the year ending

on the thirty-first day of December next preceding the time for levying and collecting said tax, and shall be levied on the first day of March, eighteen hundred and seventy-one, and eighteen hundred and seventy-two, and be due and payable on or before the thirtieth day of April in each of said years. And in addition to any sum annually due and unpaid after the thirtieth day of April, and for ten days after notice and demand thereof by the collector, there shall be levied and collected, as a penalty, the sum of five per centum on the amount unpaid, and interest on said amount at the rate of one per centum per month from the time the same became due, except from the estates of deceased, insane, or insolvent persons.

SEC. 11. *And be it further enacted*, That it shall be the duty of every person of lawful age, whose gross income during the preceding year exceeded two thousand dollars, to make and render a return on or before the day designated by law, to the assistant assessor of the district in which he resides of the gross amount of his income, gains, and profits as aforesaid; but not including the amount received from any corporation whose officers, as authorized by law, withhold and pay as taxes a per centum of the dividends made and of the interest or coupons paid by such corporation, nor that portion of the salary or pay received for services in the civil, military, naval, or other service of the United States, or as senator, representative, or delegate in Congress, from which tax has been been deducted, nor the wages of minor children not received; and every guardian and trustee, executor or administrator, and any person acting in any other fiduciary capacity, or as resident

agent for, or copartner of, any non-resident alien, deriving income, gains, and profits from any business, trade, or profession carried on in the United States, or from rents of real estate situated therein, shall make and render a return as aforesaid to the assistant assessor of the district in which he resides of the amount of income, gains, and profits of any minor or person for whom he acts. The assistant assessor shall require every such return to be verified by the oath of the party rendering it, and may increase the amount of any return, after notice to such party, if he has reason to believe that the same is understated. In case any person having a gross income as above, of two thousand dollars or more, shall neglect or refuse to make and render such return, or shall render a false or fraudulent return, the assessor or the assistant assessor shall make such return, according to the best information he can obtain by the examination of said person, or of his books or accounts, or by any other evidence, and shall add, as a penalty, to the amount of the tax due thereon, fifty per centum in all cases of willful neglect or refusal to make and render a return, and one hundred per centum in all cases of a false or fraudulent return having been rendered. The tax and the addition thereto as penalty shall be assessed and collected in the manner provided for in cases of willful neglect or refusal to render a return, or of rendering a false or fraudulent return. But no penalty shall be assessed upon any person for such neglect or refusal, or for making or rendering a false or fraudulent return, except after reasonable notice of the time and place of hearing, to be regulated by the commissioner of internal revenue, so

as to give the person charged an opportunity to be heard: *Provided*, That no collector, deputy collector, assessor, or assistant assessor shall permit to be published in any manner such income returns, or any part thereof, except such general statistics, not specifying the names of individuals or firms, as he may make public, under such rules and regulations as the commissioner of internal revenue shall prescribe.

SEC. 12. *And be it further enacted*, That when the return of any person is increased by the assistant assessor, such person may exhibit his books and accounts and be permitted to prove and declare, under oath, the amount of income liable to be assessed; but such oath and evidence shall not be conclusive of the facts, and no deductions claimed in such cases shall be allowed until approved by the assistant assessor. Any person may appeal from the decision of the assistant assessor, in such cases, to the assessor of the district, and his decision thereon, unless reversed by the commissioner of internal revenue, shall be final. The form, time, and manner of proceedings shall be subject to regulations to be prescribed by the commissioner of internal revenue.

SEC. 13. *And be it further enacted*, That any person, in his own behalf, or as such fiduciary or agent, shall be permitted to declare, under oath, that he, or his ward, beneficiary, or principal, was not possessed of an income of two thousand dollars, liable to be assessed according to the provisions of this act; or may declare that an income tax has been assessed and paid elsewhere in the same year, under authority of the United States, upon his income, gains, and profits, or those of his ward, beneficiary,

or principal, as required by law; and if the assistant assessor shall be satisfied of the truth of the declaration, such person shall thereupon be exempt from income tax in the said district.

SEC. 14. *And be it further enacted*, That consuls of foreign governments who are not citizens of the United States shall be exempt from any income tax imposed by this act which may be derived from their official emoluments, or from property in foreign countries: *Provided*, That the governments which such consuls may represent shall extend similar exemption to consuls of the United States.

SEC. 15. *And be it further enacted*, That there shall be levied and collected for and during the year eighteen hundred and seventy-one a tax of *two and a half per centum* on the amount of all *interest or coupons paid* on bonds or other evidences of debt issued and payable in one or more years after date, by any of the corporations in this section hereinafter enumerated, *and on the amount of all dividends of earnings, income, or gains hereafter declared, by any bank, trust company, savings institution, insurance company, railroad company, canal company, turnpike company, canal navigation company, and slack water company*, whenever and wherever the same shall be payable, and to whatsoever person the same may be due, including non-residents, whether citizens or aliens, and on all undivided profits of any such corporation which have accrued and been earned and added to any surplus, contingent, or other fund, *and every such corporation having paid the tax as aforesaid, is hereby authorized to deduct and withhold from any payment on account of interest, coupons, and dividends an amount equal*

to the tax of two and one-half per centum on the same; and the payment to the United States, as provided by law, of the amount of tax so deducted from the interest, coupons, and dividends aforesaid, shall discharge the corporation from any liability for that amount of said interest, coupons, or dividends, claimed as due to any person, except in cases where said corporations have provided otherwise by an express contract: *Provided, That the tax upon the dividends of insurance companies shall not be deemed due until such dividends are payable, either in money or otherwise;* and that the money RETURNED by *mutual insurance companies to their policy holders*, and the annual or semi-annual *interest* allowed or paid to the *depositors in savings banks or savings institutions*, shall not be considered as *dividends;* and that when any dividend is made, or interest as aforesaid is paid, which includes any part of the surplus or contingent fund of any corporation which has been assessed and the tax paid thereon, or which includes any part of the dividends, interest, or coupons received from other corporations whose officers are authorized by law to withhold a per centum on the same, the amount of tax so paid on that portion of the surplus or contingent fund, and the amount of tax which has been withheld and paid on dividends, interest, or coupons so received, may be deducted from the tax on such dividend or interest.

SEC. 16. *And be it further enacted*, That every person having the care or management of any corporation liable to be taxed under the last preceding section, shall make and render to the assessor or assistant assessor of the district in which such person has his office for conducting the business of

such corporation, on or before the tenth day of the month following that in which any dividends or sums of money become due or payable as aforesaid, a true and complete return, in such form as the commissioner of internal revenue may prescribe, of the amount of income and profits and of taxes as aforesaid; and there shall be annexed thereto a declaration of the president, cashier, or treasurer of the corporation, under oath, that the same contains a true and complete account of the income and profits and of taxes as aforesaid. And for any default in the making or rendering of such return, with such declaration annexed, the corporation so in default shall forfeit, as a penalty, the sum of one thousand dollars; and in case of any default in making or rendering said return, or of any default in the payment of the tax as required, or of any part thereof, the assessment and collection of the tax and penalty shall be in accordance with the general provisions of law in other cases of neglect and refusal.

157-601

Office Supreme Court, U. S.
FILED.
FEB 28 1895
JAMES H. McKENNEY,
CLERK.

INCOME TAX CASES.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894. NOS. 893 and 894.

CHARLES POLLOCK,
Appellant,

VERSUS

THE FARMERS' LOAN AND TRUST COMPANY *et al.*,
Appellees.

LEWIS H. HYDE,
Appellant,

VERSUS

THE CONTINENTAL TRUST COMPANY OF THE CITY OF NEW YORK *et al.*,
Appellees.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF ON BEHALF OF APPELLANTS IN SUPPORT OF CONTENTION THAT THE PROVISIONS AS TO INCOME TAX EMBODIED IN THE TARIFF ACT OF AUGUST 28th, 1894, ARE UNCONSTITUTIONAL.

JOSEPH H. CHOATE,
CLARENCE A. SEWARD,
BENJAMIN H. BRISTOW,
WILLIAM D. GUTHRIE,
DAVID WILLCOX,
CHARLES STEELE,
Of Counsel for Appellants.

INCOME TAX CASES.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894. Nos. 893 and 894.

CHARLES POLLOCK,
Appellant,

vs.

THE FARMERS' LOAN AND TRUST COMPANY *et al.*,
Appellees.

LEWIS H. HYDE,
Appellant,

vs.

THE CONTINENTAL TRUST COMPANY OF THE CITY OF NEW YORK *et al.*,
Appellees.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

Brief on behalf of Appellants in support of contention that the provisions as to income tax embodied in the Tariff Act of August 28th, 1894, are unconstitutional.

ASSIGNMENT OF ERRORS.

1. That the Court below erred in dismissing the bill for want of equity.

2. That the Court erred in not holding that the taxes imposed, or some portions thereof, were direct taxes, and that the act was, therefore, unconstitutional because not complying with the requirement of apportionment.

3. That the Court erred in not holding that the act was unconstitutional and void by reason of lack of uniformity and equality and of illegal discriminations and exemptions.

4. That the Court erred in not holding that Congress could not tax municipal bonds, and in not restraining the directors from paying a tax thereon.

SUMMARY OF POINTS DISCUSSED.

I. Issues raised by pleadings (pp. 3–7).

II. Jurisdiction of equity, at the instance of a stockholder in the defendant trust companies, to restrain the threatened breach of trust on the part of directors in voluntarily paying and not resisting the collection of an unconstitutional tax (pp. 8–10).

III. General provisions of Income Tax Law of 1894 (1) as to individuals and (2) as to corporations (pp. 11–17).

IV. Taxes on property or income derived therefrom are direct taxes, within the constitutional requirement of apportionment (pp. 18–31).

V. If it be held that none of the provisions of the Act impose a direct tax, they are nevertheless invalid because violating the constitutional requirement of uniformity (pp. 32–56).

VI. Irrespective of constitutional limitations, taxes must be uniform or equal on same class of property or subject of taxation (pp. 56–61).

VII. Provisions of the Fifth Amendment, prescribing due process of law and just compensation if private property be taken for public use, restrain the national government from enforcing unequal and partial tax laws (pp. 61–66).

VIII. Congress has no power to assess a tax upon the same subject matter at different rates as between individuals and certain selected private corporations or varying merely by reason of different ownership (pp. 66–89).

IX. Congress has no constitutional authority to tax income derived from state, county and municipal bonds (pp. 89–94).

X. Whole Income Tax Law should be declared unconstitutional by reason of invalidity of essential and inseparable parts (pp. 95–97).

I.

Issues raised by pleadings.

The defendant trust companies are private corporations organized under the laws of the State of New York: the Farmers' Loan and Trust Company under special acts passed by the legislature of that State at various times, commencing with the original act of incorporation February 28th, 1822 (Pollock Record No. 893, fol. 3); the Continental Trust Company under the general law authorizing thirteen or more citizens to associate as a corporation for the purpose of conducting the business of a trust company (Laws 1887, Ch. 546; Hyde Record No. 894, fol. 3). The companies have no powers which individuals or partnerships could not exercise; they are mere associations or aggregations of private citizens united for a legitimate business.

The issues of fact in the two cases are substantially identical, but, in the Pollock suit, No. 893, the interests involved are so much larger and the questions presented so much more important that the statement of facts will be confined thereto.

The Farmers' Loan and Trust Company is one of the largest trust companies in the United States. Its capital stock is $1,000,000, divided into 40,000 shares of the par value of $25, and the present capital, surplus and accumulated profits exceed the sum of $5,000,000 (Pollock Record, fol. 14). The complainant, Pollock, is the owner and registered holder of ten shares, the value of which exceeds the sum of $5,000 (fol. 7). The Company's stock is scattered throughout the United States and abroad, and is held by citizens, aliens and non-residents; and the shareholders constitute a very large body (fol. 7). Numerous holders of its stock are persons of limited means, whose annual income is less than $4,000, including the dividends upon these shares (fol. 10). The trust company has $1,000,000 invested in real estate owned by it in fee, from which it derives rents to the amount of $50,000 per annum, after paying local taxes; and $2,000,000 of its capital and surplus are invested in bonds of the City of New York, from which it derives an annual income or profit of about $60,000 (fols. 4–5); its annual profits exceed $300,000, and its income tax would be $6,000 (fol. 5).

In addition to the property held in its own right, the company is executing numerous trusts, and " now holds, as trustee, for minors, individuals, copartnerships, associations and corpora-

tions too numerous to mention, resident in the United States and elsewhere, many parcels of real estate exceeding one hundred (100) in number, situate in the various States of the United States, and amounting in the aggregate to a value in excess of $5,000,000, the rents and income of which real estate collected, received and held by said defendant in its numerous fiduciary capacities annually exceed the sum of two hundred thousand dollars " (fols. 5–6).

The complainant duly requested the trust company to refrain from complying with the provisions of the Income Tax Law, and from voluntarily paying the tax, not only in respect of its property, income and profits, but also in respect of the various trusts under its control The company, nevertheless, after considering the request at a meeting of the directors at which the matter was formally laid before them for action, declined the request, and resolved to comply with the provisions of the law and to pay the tax upon (1) the whole net profits or income, (2) rents from lands, (3) income from municipal bonds, and (4) income of trust estates held in fiduciary capacities (fols. 7, 8, 14–15). Every requirement of the 94th rule was complied with, and every possible effort made to obtain action on the part of the company (*Hawes* v. *Oakland*, 104 U. S., 450, 461).

The directors assigned as a reason for the refusal to take any steps to test the validity of the act, that they deemed it inexpedient to comply with the demand of the complainant, on the ground that failure to comply with the provision of the law of 1894 would subject the company to litigation with the United States, and the risk of incurring penalties and of clouding the title to all the real estate held by it in its own behalf and in its fiduciary capacity (fols. 14, 21).

The bill of complaint was thereupon filed against the trust company and its directors, and the aid of equity invoked to prevent the waste of the funds belonging to the company and to the beneficiaries for whom it acts as trustee, which would necessarily result from the voluntary payment of an unconstitutional tax. Neither the Collector of Internal Revenue nor any public officer is made a party, nor is any injunction sought to restrain the assessment or collection of the tax. The case was heard in the Circuit Court of the United States for the Southern District of New York, upon bill and demurrer. The demurrer being sustained, an appeal direct to this Court was prayed and allowed under Section 5 of the Act of March 3d, 1891.

The enforcement of the Income Tax Law of

1894 directly affects the trust company and its stockholders in the following particulars (fols. 5–6), viz.:

(1) **As to the rents derived from the company's lands, which rents annually amount to $50,000 from its own property and $200,000 from the numerous parcels of land which it holds as trustee.**

(2) **As to income derived generally from personal property, amounting to about $200,000 per annum.**

(3) **As to income derived from its $2,000,000 of municipal bonds, which income is about $60,000 per annum.**

(4) **As to the exemption from taxation of all persons having incomes of $4,000 or under, thus taxing two per cent. of the population of the United States, and exempting the remaining population, although the latter hold in the aggregate the greater portion of all property, real and personal, in the United States.**

(5) **As to the discrimination against corporations, in that they are not entitled to exemption on $4,000 of income.**

(6) **As to the discrimination against persons whose income is derived from dividends on shares of corporations, whether such income be more or less than $4,000.**

II.

JURISDICTION OF EQUITY, AT THE INSTANCE OF A STOCKHOLDER IN DEFENDANT TRUST COMPANIES, TO RESTRAIN THE THREATENED BREACH OF TRUST ON THE PART OF DIRECTORS IN VOLUNTARILY PAYING AND NOT RESISTING THE COLLECTION OF AN UNCONSTITUTIONAL TAX.

The jurisdiction of a court of equity to prevent any threatened breach of trust has been repeatedly sustained. Upon this ground, the misapplication or diversion of the funds of a corporation will be restrained. This jurisdiction enables the Court to inquire into and enjoin any illegal payment by directors out of the capital or profits of a corporation. The payment of an unconstitutional tax is a waste of the corporate funds, and, therefore, a breach of trust.

The leading case on the subject in this country is *Dodge* v. *Woolsey*, 18 Howard, 331, decided in 1855. The suit there sustained was by a stockholder against the directors of a corporation to enjoin the payment of an unconstitutional tax. Mr. Justice WAYNE said, in delivering the opinion of the Court (pp. 341, 345):

> "It is now no longer doubted, either in England or the United States, that courts of equity, in both, have a jurisdiction over corporations, at the instance of one or more of their members; to apply preventive remedies by injunction, to restrain those who ad-

minister them from doing acts which would amount to a violation of charters, or to prevent any misapplication of their capitals or profits, which might result in lessening the dividends of stockholders, or the value of their shares, as either may be protected by the franchises of a corporation, if the acts intended to be done create what is in the law denominated a breach of trust. And the jurisdiction extends to inquire into, and to enjoin, as the case may require that to be done, any proceedings by individuals, in whatever character they may profess to act, if the subject of complaint is an imputed violation of a corporate franchise, or the denial of a right growing out of it, for which there is not an adequate remedy at law. * * *

"Thinking, as we do, that the action of the board of directors was not 'an error of judgment merely' but a breach of duty, it is our opinion that they were properly made parties to the bill, and that the jurisdiction of a court of equity reaches such a case to give such a remedy as its circumstances may require."

The principles of this case have been frequently approved by the Court, and particularly in *Hawes* v. *Oakland*, 104 U. S., 450, 452, 457.

The suits at bar, in addition to the element of breach of trust or duty on the part of the directors in voluntarily paying an unconstitutional tax, involve the certainty of a multiplicity of suits with the numerous shareholders of the trust company, as well as with the minors and other beneficiaries for whom it is acting as trustee, guardian, &c., and the probability of clouding the title of the real estate owned by the trust company in fee in its own behalf or

held by it as trustee,—constituting more than one hundred parcels of land situated in various States, and amounting in the aggregate to over $6,000,000 in value (U. S. Rev. Stat., §§ 3186 *et seq.*).

To deny equity jurisdiction under such circumstances would leave the complainants practically remediless, and delay would defeat all opportunity of adequate relief.

Dows v. *City of Chicago*, 11 Wall., 108, 112;

Cummings v. *National Bank*, 101 U. S., 153, 157;

Allen v. *B. & O. R.R. Co.*, 114 U. S., 311, 314;

Union Pacific R. Co. v. *Cheyenne*, 113 U. S., 516, 525;

Shelton v. *Platt*, 139 U. S., 591, 597, 598;

Pacific Ex. Co. v. *Seibert*, 142 U. S., 339, 348;

In re Tyler, 149 U. S., 164, 188.

III.

GENERAL PROVISIONS OF THE INCOME TAX LAW OF 1894 (1) AS TO INDIVIDUALS, (2) AS TO CORPORATIONS.

(1.)

AS TO INDIVIDUALS.

The act imposes a tax of two per cent. on the gains, profits and income of every citizen and every person residing in the United States derived from any kind of property, rents, interest, dividends, salaries, or from any profession, trade, employment or vocation carried on in the United States or elsewhere, or from any source whatever (Sec. 27), including interest upon notes, bonds and other securites, "except such bonds of the United States the principal and interest of which are by the law of their issuance exempt from all Federal taxation" (Sec. 28). The tax is imposed not only on the rents and profits realized from sales of real property, but upon sales of the growth and produce thereof. It is also imposed upon "money and the value of all personal property acquired by gift or inheritance." The farmer is entitled to deduct the value of stock or produce "consumed directly by the family," but no such advantage or exemption is granted to others (Sec. 28). The tax upon individuals is not upon their entire income, but is upon the

"excess over and above $4,000," and all persons having incomes of $4,000 or under are exempted from taxation (fol. 28). The result of this exemption is to impose the whole burden of taxation upon less than two per cent. of the population of the United States, although the remaining ninety-eight per cent. hold the greater portion of all property, real or personal (fol. 10). The farmer is distinctly favored, for in addition to the $4,000 exemption, he is allowed to deduct the stock or produce "consumed directly by the family" (Sec. 28). Different rules are provided for families, viz.: "That only one deduction of four thousand dollars shall be made from the aggregate income of all members of any family, composed of one or both parents, and one or more minor children, or husband and wife; that guardians shall be allowed to make a deduction in favor of each and every ward, except that in case where two or more wards are comprised in one family and have joint property interests, the aggregate deduction in their favor shall not exceed four thousand dollars" (Sec. 28). Thus, the wife pays at a different rate from the husband; the minor child at a higher rate than the adult child. The penalties in the case of individuals are fifty per cent. of the amount of the tax in cases of wilful neglect or refusal to render a return, and one

hundred per cent. in cases of wilfully false or fraudulent returns (Sec. 29).

(2.)

AS TO CORPORATIONS.

The entire net profits or incomes of all corporations (save those excepted as below specified) are made subject to an annual tax of two per cent. Partnerships are not taxed (Sec. 32). The exemption of taxation on $4,000 allowed to individuals is denied to corporations. The rate of the taxation upon corporations is, therefore, in excess of that imposed upon any class of individuals. Individuals having incomes of $4,000 or under, pay nothing, but corporations having like incomes pay two per cent. upon their net profits. Individuals having incomes over $4,000 pay merely on the excess over that amount, but corporations having like incomes pay two per cent. upon the entire amount of their profits including the first $4,000. A large class of citizens, with incomes of $4,000 and less, have their savings invested in corporate enterprises, and derive their income from dividends on shares of stock in corporations; yet they are subjected to a two per cent. tax upon their interest in the corporate profits. The same income, if derived from the business of partnerships instead of corporations, would be exempted.

The act exempts charitable, religious and educational institutions, as was done in the prior acts; but it also favors and exempts certain classes of private concerns, such as building and loan associations or companies, savings banks and mutual insurance companies (Sec. 32). The building and loan associations or companies are exempted, provided they "make loans only to their shareholders"; certain savings banks, institutions and societies are also exempted, provided, among other things, that they divide and distribute their profits among the depositors or conduct their business on the mutual plan; and certain insurance companies conducted on the mutual plan are likewise wholly exempted. The exemption is granted without regard to the amount of property or income of any such concerns. The census reports show the immense accumulations and estates in the hands of these excepted corporations or associations.

The discrimination against the corporations taxed is not confined to the inequality of the rate of taxation.

(1.) Individuals whose income is $3,500 or less make no returns (Sec. 29); corporations having similar incomes must make returns under penalties.

(2.) Individuals pay a penalty of fifty per

cent. of the tax only in case of willful neglect or refusal to render return (Sec. 29); the mere fact of default will subject the corporation to a penalty of $1,000 and two per cent. per month on the amount of taxes due until paid (Sec. 32). Thus, taking an excess income of $10,000 (which would represent a tax of $200) the penalty of an individual for neglect or failure to render a list or return is $100 (*i. e.*, fifty per cent. of the tax), while the penalty for the same neglect or failure on the part of a corporation is $1,000 and two per cent. per month of the tax until paid.

(3.) Corporations are compelled to disclose the details and items of their business (Sec. 35), while the direction as to the contents of the returns of individuals contains no such inquisitorial provisions (Sec. 34).

(4.) It is made the duty of every corporation "to keep full, regular and accurate books of account upon which all its transactions shall be entered from day to day in regular order," which are to be at all times open to the inspection of the collector or deputy collector upon certain conditions, and the refusal to permit such inspection is punishable by a penalty of fifty per cent., to be added to the lawful assessment of the income of the corporation (Sec. 36.) No such duty is imposed upon individuals or partnerships; they are not compelled to keep

any accounts; their private books are free from inspection.

Section 32 of the Act of 1894 is substantially new in that no similar discriminating provisions against corporations as a class existed in the previous income tax laws of

(1.) August 6, 1861, ch. 45, §§ 49–51; 12 Stat. at Large, 309.

(2.) July 1, 1862, ch. 119, §§ 89, 93; 12 Stat. at Large, 473.

(3.) June 30, 1864, ch. 173, §§ 116–123; 13 Stat. at Large, 281;

(4.) March 3, 1865, ch. 78; 13 Stat. at Large, 479.

(5.) July 13, 1866, ch. 184; 14 Stat. at Large, 137;

(6.) March 2, 1867, ch. 169, § 13; 14 Stat. at Large, 477;

(7.) July 14, 1870, ch. 255, §§ 6–8; 16 Stat. at Large, 257.

Under these acts, private corporations, merely as such, were not taxed, but the dividends were included in the taxable income of individuals. Individual stockholders, therefore, whose income was within the exempted amounts, received the full benefit of the exemption and to the same extent as if their income were derived from other than corporate investments. Prior to the Act of 1894, there had been no attempt to tax

corporations generally as a class. The language of the new act is, "all other corporations, companies, or associations doing business for profit in the United States, no matter how created and organized, but not including partnerships" (Sec. 32, L. of 1894). Under the old income tax laws, the gains and profits of companies, "whether incorporated or partnership," were included in the income of the stockholders, who had the benefit of the exemptions, as stated above, and consequently bore no greater share of the common burden of taxation than other citizens. (Chap. 173, Sec. 117, L. 1864.)

The previous acts selected certain companies, and classified their businesses for the purposes of taxation. The classification was limited to the business of banks, trust companies, savings institutions and insurance companies, "*either stock or mutual*, under whatever name or style known or called, whether specially incorporated or existing under general laws" (Chap. 119, Sec. 91, L. of 1862; Chap. 173, Sec. 120, L. of 1864), and railroad, canal, turnpike, canal navigation or slack water companies (Chap. 173, Section 122, *ibid.*); the dividends and interest payments were taxed, not the property or net profits, and these companies were "authorized to deduct and withhold from all payments, on account of any interest or coupons and

dividends due and payable as aforesaid, the duty of five per centum," so that the tax fell upon the interest of the creditors or shareholders, and not upon the corporation itself.

IV.

TAXES ON PROPERTY OR ON INCOME DERIVED THEREFROM ARE DIRECT TAXES, WITHIN THE CONSTITUTIONAL REQUIREMENT OF APPORTIONMENT.

The collection of historical matter, &c., submitted by Mr. Seward shows that at all times, both before and since the adoption of the Constitution, a tax upon incomes has been recognized, designated and described as a direct tax.

There is no ambiguity about the constitutional provision. It is that direct taxes shall be apportioned among the States (Const. U. S., Article I., Sec. 2 and Sec. 9). This being so, it is the duty of the Court to apply the constitutional rule, and not to disregard it because this particular case was possibly not in the mind of the Convention when the article was framed (*Dartmouth College* v. *Woodward*, 4 Wheat., 518, 644). The only argument in favor of construction against the sense, has been that the rule established would make it difficult to levy an income

tax. That difficulty, if it existed, might well be urged as a reason why an income tax cannot be constitutionally imposed. It is no ground for arguing that when the States adopted a constitutional provision covering an income tax, the instrument did not mean what its terms plainly said.

MARSHALL, C. J., said in *Gibbons* v. *Ogden*, 9 Wheaton, 1, 188:

> "As men, whose intentions require no concealment, generally employ the words which most directly and aptly express the ideas they intend to convey, the enlightened patriots who framed our constitution, and the people who adopted it, must be understood to have employed words in their natural sense, and to have intended what they have said."

The Constitution contains apt provisions permitting, generally, taxation of taxable property and adopted manifestly with reference to the different character and location of the subjects of taxation. Direct taxes are to be imposed according to apportionment among the States. This is because the subject of direct taxation will be found in all the States, and apportionment will, therefore, be practicable and just. The constitutional provision was carefully worded so as to preclude a combination of States from extorting tribute from other States. But the present tax contains a principle which, if approved, may lead to a far different

union of the States than that contemplated by the constitution. For, if it be upheld, Congress may, by a graduated income tax, impose upon a few States practically the whole burden of national taxation.

Indirect taxes, *i. e.*, imposts, duties or excises are, however, under the terms of the constitution, to be laid according to the rule of uniformity. The subjects upon which they are imposed will not be found in all the States; apportionment among the States will not be practicable, and justice can be secured only by applying the rule of uniformity among the subjects taxed irrespective of the State in which they may happen to be found.

Any tax which is imposed upon property must be a direct tax, and, under familiar rules, this would include a tax upon income received immediately from the property, for that is the same as a tax upon the property itself (*Weston* v. *Charleston*, 2 Peters, 449, 475, 478). Accordingly, Alexander Hamilton, the counsel for the Government in the *Hylton Case*, says that the only direct taxes are capitation taxes, taxes on land and buildings and "general assessments, whether on the whole property of individuals, or on their whole real or *personal* estate; all else must of necessity be considered

as indirect taxes," (Hamilton's Works, Putnam's edition of 1885, Vol. 7, p. 332).

It cannot be seriously claimed that this Court is committed to the doctrine that a tax falling directly upon personal property is not a direct tax equally with one falling directly upon real property, or that the one is a direct tax, while the other is an impost, duty or excise. Such a distinction has no foundation in principle. It cannot rest upon any supposed exigencies of the government. The provisions adopted by the States support no such contention. Even if it could be argued that such a doctrine had received the apparent sanction of prior adjudications in this Court, such cases should be limited to accord with what is unquestionably the true interpretation of the constitutional limitations upon the taxing power of Congress.

The question now presented, namely, whether a tax upon land or rents and upon the principal or income of personal property is a direct tax, has never been necessarily involved in any case int his Court prior to the suits at bar.

Examination of the decided cases upon which the government has heretofore founded its claim that no portion of the present income tax falls within the description of a direct tax, will show that they fail to support that conten-

tion, because in none of them was there involved a tax upon income derived directly from property, real or personal. They all involved the question of a tax upon a privilege or business; and it must now be deemed settled that such a tax is not a tax upon the property of the person who enjoys the privilege or carries on the business (*Society* v. *Coite*, 6 Wall., 594; *Railroad Co.* v. *Collector*, 100 U. S., 595, 598; *Home Ins. Co.* v. *New York*, 134 U. S., 594; *Maine* v. *Grand Trunk Ry. Co.*, 142 U. S., 217; *Ficklen* v. *Shelby Co.*, 145 U. S., 1, 24.) The two subjects of taxation are entirely distinct (*Railroad Co.* v. *Peniston*, 18 Wall., 5; *Pullman's Car Co.* v. *Penn.*, 141 U. S., 18, 25). Indeed, so far as they consider the question, the cases relied on by the defendants recognize that a tax imposed directly upon personal property would be a direct tax.

In *Hylton* v. *United States*, 3 Dallas, 171, Congress passed a law on June 5, 1794, entitled "An act laying *duties* upon carriages for the conveyance of persons" (p. 175). The act imposed a fixed rate per annum for each description of carriage but without regard to value. The question was whether this was a direct tax. The counsel for the government, Alexander Hamilton, in his brief above referred to (*supra*, p. 20), stated that "if the meaning of the word *excise* is to be sought in the British

statutes, it will be found to include the duty on carriages, which is there considered as an *excise*, and then must necessarily be uniform and liable to apportionment; consequently not a direct tax." The Court held that this was not a direct tax on the carriages, but was an excise upon the privilege or right to keep them. One of the judges described it as a tax "upon expense," and, therefore, an indirect tax (p. 175). He said, too, "*If Congress, for instance, should tax, in the aggregate or mass, things that generally pervade all the states in the Union, then, perhaps, the rule of apportionment would be the most proper*, especially if an assessment was to intervene. This appears by the practice of some of the States, to have been considered as a direct tax." (p. 177). Another of the judges said "All taxes on expenses or consumption are indirect taxes" * * and, quoting from Smith's Wealth of Nations, "consumable commodities, whether necessaries or luxuries, may be taxed in two different ways; the consumer *may either pay an annual sum on account of his using or consuming goods of a certain kind*, or the goods may be taxed while they remain in the hands of the dealer, and before they are delivered to the consumer." (p. 180). It is quite clear that what was taxed was merely the right or privilege of maintaining or using

the carriage for the conveyance of persons, quite independently of the value of the vehicle itself. This, therefore, was not a tax upon property, but a duty or excise upon a privilege or license, and was under all definitions, what it was in fact termed by the statute, "a duty."

In *Pacific Ins. Co.* v. *Soule*, 7 Wall., 433, 446, the Court (SWAYNE, J.) cited the above case, and held that the tax then under consideration was upon the *business* of the insurance company, and, therefore, not a direct tax. (See also *Railroad Co.* v. *Collector*, 100 U. S., 595, 598).

In *Veazie Bank* v. *Fenno*, 8 Wall., 533, the Court considered whether the tax of ten per cent. upon the circulating notes of State banks was a direct tax. After examining the Hylton case, the Court said that it might be taken as established on the testimony of one of the judges in that case "that the words direct taxes, as used in the Constitution, comprehended only capitation taxes, and taxes on land, and perhaps taxes on *personal property by general valuation and assessment of the various descriptions possessed within the several States*" (p. 546). It then said that the tax upon circulation should be classed under the head of duties, and was similar to the tax in the Soule case above mentioned, and finally held that the tax could be upheld under the power conferred upon Congress to

coin money. While there are, perhaps, expressions to the contrary in the opinion, it is perfectly clear that this tax was not upon any property or contracts of the banks, but upon the privilege or right to create contracts or property. Accordingly, in *National Bank* v. *United States*, 101 U. S., 1, 6, Mr. Chief Justice WAITE delivered the opinion of the Court and, in discussing *Veazie Bank* v. *Fenno*, said:

> "THE TAX THUS LAID IS NOT ON THE OBLIGATION, BUT ON ITS USE IN A PARTICULAR WAY."

In *Scholey* v. *Rew*, 23 Wallace, 331, 347, the question was whether a succession tax upon the devolution of title to real estate was a direct tax. The Court held that it was not a tax upon the land, but that "the succession "or devolution of the real estate is the subject-"matter of the tax or duty, or, in other words, it "is the right to become the successor of real "estate upon the death of the predecessor." A tax upon this right or privilege was held not to be a direct tax.

In *Springer* v. *United States*, 102 U. S., 586, the question was whether a tax upon gains, profits and incomes was or was not a direct tax. It did not appear that this tax fell upon any property of the defendant, and the Court (SWAYNE, J.) comments upon the absence of proof of this (p. 598). The Court there reviewed the cases

above stated and said that they were conclusive. The facts before the Court failed to disclose the precise element necessary to show that the tax was direct; they failed to disclose that the tax was levied upon defendant's property. In fact his gains, profits or income may very well have arisen wholly from the exercise of his profession, the tax upon which would be an indirect tax, like any tax upon occupation or business. The case, therefore, cannot be claimed to have *decided* that a tax upon lands or personal property would not be a direct tax. No such question was presented to the Court. As already stated, there was no proof that the tax fell upon the defendant's property. Moreover, the suggestion of Mr. Justice MILLER, at the previous term of the Court, speaking of the income tax (*Railroad Co.* v. *Collector*, 100 U. S., 595, 596), deserves the most careful consideration in view of the contention of the government that the *Springer Case* is authoritative as a rule of future action, viz.:

> "As the sum involved in this suit is small, and the law under which the tax in question was collected has long since been repealed, the case is of little consequence as regards any principle involved in it as a rule of future action."

In *Cohens* v. *Virginia*, 6 Wheaton, 264, 399, Chief Justice MARSHALL said:

> "It is a maxim not to be disregarded, that gen-

> eral expressions, in every opinion, are to be taken in connection with the case in which those expressions are used. If they go beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit when the very point is presented for decision."

The present tax falls upon the income derived not merely from business but also expressly upon that derived from property (Secs. 27, 32), and, therefore, directly upon the property producing the income, whether real or personal. Noticeably is this the case with the tax upon "rents" and the "growth or produce" of land. The act taxes the income received from land, the growth or produce of the land, and any profits realized from its sale. It, therefore, taxes every element of value of the land which the owner can realize from third parties. It must be clear that a tax upon what gives the land value is a tax upon the land itself. In the words of Hamilton: "What in fact is property but a fiction, without the beneficial use of it? In many cases, indeed, the income or annuity is the property itself" (3 Hamilton's Works, Putnam's edition, p. 34). As one of the Justices said, in *Hylton* v. *United States*, 3 Dallas, 171, 177, "perhaps, the immediate product of land, in its original and crude state, ought to be considered as the land itself; it makes part of it. * * *Land, independently of*

its produce, is of no value." A fair illustration of the effect of the law would be the situation of an owner of a life estate in land. He would be the owner of an estate of freehold which, however, would consist wholly in his right to receive the rents and profits. That freehold estate under the present law would be directly taxed at a percentage of its annual value.

It would be idle to suggest that the tax cannot be deemed direct because it is imposed only upon the income of property, and, therefore, does not fall upon property which yields no income. The tax clearly operates upon the principal of gifts At most, too, that suggestion amounts to no more than saying that Congress has seen fit not to tax unproductive property. But that circumstance does not affect the character of the tax actually imposed upon productive property. It scarcely needs argument to establish that anything which affects every element that gives an article its value, in the eye of the law, affects directly the article itself. There are many illustrations of this.

In *Brown* v. *Maryland*, 12 Wheaton, 419, it was held that a tax on the occupation of an importer is the same as a tax on imports, and is therefore void. The Court said (MARSHALL, C. J., p. 444):

"It is impossible to conceal from ourselves, that

> this is varying the form, without varying the substance. It is treating a prohibition which is general, as if it were confined to a particular mode of doing the forbidden thing. All must perceive, that a tax on the sale of an article, imported only for sale, is a tax on the article itself."

In *Weston* v. *Charleston*, 2 Peters, 449, it was held that a tax upon the income of United States securities was a tax upon the securities themselves and equally inadmissible. In *Dobbins* v. *Commissioners*, 16 Peters, 435, it was held that the income from an official position could not be taxed, if the office was itself exempt. In *Almy* v. *California*, 24 Howard, 169, it was held that a duty on a bill of lading was the same thing as a duty on the article which it represents. In *Railroad Co* v. *Jackson*, 7 Wall., 262, it was held that a tax upon the interest payable upon bonds was a tax not upon the debtor, but upon the security, the bonds. In *Cook* v. *Pennsylvania*, 97 U. S., 566, it was held that a tax upon the amount of sales of goods made by an auctioneer was a tax upon the goods sold. In *Philadelphia Steamship Co.* v. *Pennsylvania*, 122 U. S., 326, and *Leloup* v. *Mobile*, 127 U. S., 640, 648, it was held that a tax upon the income received from interstate commerce was a tax upon the commerce itself and equally unauthorized. In *Opinion of the Justices*, 53 N. H., 634, it was held that a tax upon the income

of United States bonds was no different from a tax upon their principal, and was equally objectionable. The same thing was held in *Bank* v. *Commonwealth*, 9 Bush, 46; and to the same effect are *People* v. *Commissioners*, 90 N. Y., 63; *State Freight Tax*, 15 Wall., 232, 274; *Welton* v. *Missouri*, 91 U. S., 275, 278; *Fargo* v. *Michigan*, 121 U. S., 230.

> "If a man seised of lands in fee by his deed granteth to another the profit of those lands, to have and to hold to him and his heires, and maketh livery *secundum formam chartae*, the whole land itselfe doth passe; *for what is the land but the profits thereof*" (Coke upon Littleton, Lib. I., Cap. I., Sec. I., p. 4 b.).
>
> "A devise of the interest or of the rents and profits is a devise of the thing itself, out of which that interest or those rents and profits may issue."
>
> *Patterson* v. *Ellis*, 11 Wend., 259, 298.

And by the following authorities it is held, under a variety of circumstances, that what affects the income of property, real or personal, affects the property from which the income arises: *Blanchard* v. *Blanchard*, 1 Allen, 223, 225; *Wood* v. *Griffin*, 46 N. H., 230, 234; *Railroad Co.* v. *Railroad Cos.*, 65 N. H., 393, 454; *Earl* v. *Grim*, 1 Johns. Ch., 494; *Mott* v. *Richtmyer*, 57 N. Y., 49, 60; *Diament* v. *Lore*, 31 N. J. Law, 220, 222; *Traphagen* v. *Levy*, 45 N. J. Eq., 448, 452; *Anderson* v. *Greble*, 2

Ashmead (Pa.), 136; *Keene's Appeal*, 64 Pa. St., 268, 274; 3 Washburn on Real Property, 5th Ed., 406, 565.

It is clear, therefore, that the present act taxes the lands of these corporations, and that under all the authorities, such a tax is a direct tax and is unconstitutional because it disregards the rule of apportionment.

Equally must this be the case so far as the tax falls directly upon personal property. This is practically conceded in the *Veazie Bank* case, with the addition that possibly this would be the case, if there were a general assessment. But where is the constitutional requirement that there should be a general assessment in order to constitute the tax a direct tax? There is no authority for reading that condition into the Constitution.

> An assessment consists in "determining the value of a man's property or occupation for the purpose of levying a tax" (*People* vs. *Weaver*, 100 U. S., 539, 545).

Surely, no more efficient method of general assessment could be devised than that now sought to be employed, namely, taxing property according to its product by way of income while retained, and profit upon sales when sold.

It is submitted, with the greatest respect, that the Court is committed to no such absurdity as to hold that a tax levied upon land accord-

ing to its value is a direct tax, while a tax levied upon personal property according to its value is an indirect tax. Whatever *dicta* there may have been upon the subject, the question cannot be deemed settled until it is decided in accordance with the plain meaning of the Constitution and the dictates of common sense in a case directly presenting the question.

It follows from these considerations that the present act, so far as it taxes property is unconstitutional, because it is a direct tax which is not apportioned among the States. Inasmuch as the provisions to that effect are an inseparable part of the entire system, the whole act must be held unconstitutional. (See cases cited under Point X.)

V.

IF IT BE HELD THAT NONE OF THE PROVISIONS OF THE ACT IMPOSE A DIRECT TAX, THE LAW IS NEVERTHELESS VOID BECAUSE VIOLATING THE CONSTITUTIONAL REQUIREMENT OF UNIFORMITY.

The features in which the Act of 1894 is lacking in equality and uniformity have already been stated (*supra*, pp. 11–18). Particular attention may now be called to the provisions which (1) tax the income of certain corporations, companies and associations "no matter how created and organized" at a higher rate than the in-

come of individuals or partnerships derived from precisely similar property or business; (2) deny to individuals deriving their income from shares in certain corporations, companies or associations the benefit of the exemption of $4,000 granted to all other persons interested in similar property and business; and (3) except from the operation of the Act and from the burden of taxation numerous corporations, companies and associations having similar property and carrying on similar business to those expressly taxed. The allowance to farmers of the stock or produce "consumed directly by the family" (Sec. 28), likewise discriminates in favor of that particular class, for it may result in practically doubling their exemption of $4,000.

Upon the subject of this discrimination, reference may be made to some of the observations of Prof. Dunbar (Quarterly Journal of Economics, Vol. 9, p. 42, October, 1894), says:

> "Another point somewhat difficult of explanation is the fact that, while the act of 1894 professes to establish an exemption of $4,000, nevertheless persons whose incomes are within that line are to be subject to an income tax on so much income as they may derive from dividends. The corporation paying the tax levied on its net income evidently pays, and is intended by the act to pay, an income tax for every stockholder whose dividend is thereby diminished, whether he is a millionaire or a poor man. It is clear that the stockholder in such a case remains subject to the tax, unless some provision is made for refunding to him the amount paid on his

account. Under the English law, where dividends or interest have thus been taxed at the source, any stockholder or creditor entitled to exemption from income tax can obtain repayment of the tax thus unduly exacted from him, by making application in the proper place and form. But no provision of this sort is made in the new act of Congress; and a person supposed to be exempt from taxation under the law may, in fact, be subject to taxation on his whole income if, as sometimes happens, he receives it all from dividends.

If the present income tax law is not unconstitutional, it would seem to follow that Congress could provide that importations of certain goods should pay a duty of twenty-five per cent. if imported by individuals or partnerships, and fifty per cent. if imported by corporations, and that it could provide that the present excise or duty upon brewers, distillers, dealers in tobacco, manufacturers of cigars, oleomargarine and playing cards should be at one rate for an individual or partnership and at double such rate for a corporation. Such certainly is not within the taxing power of any government.

It will now be shown that the discriminations and inequalities in the present Act render it invalid, because they are repugnant (1) to the express constitutional requirement of uniformity in duties, imposts and excises; (2) to the fundamental condition that taxes shall be imposed according to the rule of uniformity and equality;

(3) to the express constitutional provisions securing due process of law and compensation when private property is taken for public use; and (4) to the rule which inhibits the exemption or favoritism of classes, private companies or associations in which the public have no interest or concern. It will also be shown that no such discrimination can be upheld upon the theory of a tax upon the franchise to be a corporation.

Section 8 of Article I of the Constitution of the United States provides—

"BUT ALL DUTIES, IMPOSTS AND EXCISES SHALL BE UNIFORM THROUGHOUT THE UNITED STATES."

The contention of the government in support of the act apparently has been, so far as it has ever defined its position, that the uniformity required is simply geographical in character, and does not prohibit inequality in taxes upon the same property or subject of the tax, provided the *inequality* be uniform throughout the United States. The appellants submit that this position is wholly untenable and that no authority sustains it.

HAMILTON, in *The Federalist* (January 8, 1788, No. XXXVI., 9 Hamilton's Works, Putnam's ed., pp. 209, 210), used the following language in answer to the suggestion that the Federal government might abuse the power of taxation

(quoted in part by Mr. Justice CLIFFORD, in *Scholey* v. *Rew*, 23 Wall., 331, 348):

> "The taxes intended to be comprised under the general denomination of internal taxes may be subdivided into those of the *direct* and those of the *indirect* kind. Though the objection be made to both, yet the reasoning upon it seems to be confined to the former branch. And indeed, as to the latter, *by which must be understood duties and excises on articles of consumption*, one is at a loss to conceive what can be the nature of the difficulties apprehended." * * * (As to direct taxes) "An actual census or enumeration of the people must furnish the rule, a circumstance which effectually *shuts the door to partiality or oppression*. The abuse of this power of taxation seems to have been provided against with guarded circumspection. In addition to the *precaution* just mentioned, there is a provision that 'all duties, imposts and excises shall be UNIFORM throughout the United States.'"

It may, therefore, be assumed that Hamilton certainly did not contemplate that the door had been left open to *partiality* or *oppression* in respect of indirect taxes.

Hylton v. *United States*, 3 Dallas, 171, was the first case presented to the Supreme Court involving any of the clauses of the Constitution as to taxation. Mr. Justice CHASE said (pp. 173, 174):

> "The great object of the Constitution was, to give Congress a power to lay taxes, adequate to the exigencies of government; but they were to observe two rules in imposing them, namely, the rule of *uniformity*, when they laid *duties*, *imposts*, or *excises*; and the rule of *apportionment*, according to the

> *census*, when they laid any *direct* tax. * * * The rule of apportionment is only to be adopted in such cases where it can reasonably apply; and the subject taxed, must ever determine the application of the rule."

Mr. Justice PATERSON said (pp. 176, 180):

> "The question occurs, how is such tax to be laid, uniformly or apportionately? The rule of uniformity will apply, because it is an indirect tax, and direct taxes only are to be apportioned. * * * *The rule of uniformity, on the contrary, implies certainty, and leaves nothing to the will and pleasure of the assessor. In such case, the object and the sum coincide, the rule and the thing unite, and of course there can be no imposition.* * * * Uniformity is an instant operation on individuals, without the intervention of assessments, or any regard to states, and is at once easy, certain, and efficacious."

In *Sturges* v. *Crowninshield*, 4 Wheaton, 122, 193, Chief Justice Marshall discussed the meaning of the constitutional provision, "the Congress shall have power * * * to establish * * * uniform laws on the subject of bankruptcy throughout the United States," and said:

> "The peculiar terms of the grant certainly deserve notice. Congress is not authorized *merely* to pass laws, the operation of which shall be uniform, *but* to establish uniform laws on the subject throughout the United States."

In *M'Culloch* v. *Maryland*, 4 Wheaton, 316, 435, Chief Justice MARSHALL used the following language:

> "The people of all the States, and the States themselves, are represented in Congress, and, by their representatives, exercise this power. When

> they tax the chartered institutions of the States, they tax their constituents; and these taxes must be uniform."

The constituents were the individual citizens or stockholders composing the "chartered institutions," and the Chief Justice certainly meant that these constituents, interested in such institutions, were abundantly protected by the requirement that the tax should be uniform.

In *Loughborough* v. *Blake*, 5 Wheaton, 317, the question was as to the power of Congress to impose a direct tax in the District of Columbia, Chief Justice MARSHALL said:

> "The 8th section of the 1st article gives to Congress the 'power to lay and collect taxes, duties, imposts and excises,' for the purposes thereinafter mentioned. This grant is general, without limitation as to place. It, consequently, extends to all places over which the government extends. If this could be doubted, the doubt is removed by the subsequent words which *modify* the grant. These words are, 'but all duties, imposts, and excises, shall be uniform throughout the United States.' It will not be contended, that the modification of the power extends to places to which the power itself does not extend. The power then to lay and collect duties, imposts, and excises, may be exercised, and must be exercised, throughout the United States. Does this term designate the whole, or any particular portion of the American empire? Certainly this question can admit of but one answer. It is the name given to our great republic, which is composed of States and territories. The District of Columbia, or the territory west of the Missouri, is not less within the United States, than

> Maryland or Pennsylvania; *and it is not less necessary, on the principles of our Constitution, that uniformity in imposition of imposts, duties, and excises, should be observed in the one, than in the other* (p. 318). If it be said, that the *principle of uniformity*, established in the Constitution, secures the district from oppression in the imposition of indirect taxes, it is not less true, that the principle of apportionment, also established in the Constitution, secures the district from any oppressive exercise of the power to lay and collect direct taxes " (p. 325).

In *Gibbons* v. *Ogden*, 9 Wheaton, 1, 201, Chief Justice MARSHALL, referring to the power of Congress in this regard, said:

> "We think it very clear, that it is considered as a branch of the taxing power. It is so treated in the first clause of the 8th section: 'Congress shall have power to lay and collect taxes, duties, imposts and excises;' and, before commerce is mentioned, the rule by which the exercise of this power must be governed, is declared. It is, that all duties, imposts, and excises, *shall be uniform.*"

In *Ogden* v. *Saunders*, 12 Wheaton, 213, 274, Mr. Justice JOHNSON, in the consideration of the question whether a State could establish a bankrupt law, discussed the power of Congress to "establish uniform laws on the subject of bankruptcies throughout the United States," and said:

> "Yet, on this subject, the use of the term *uniform*, instead of *general*, may well raise a doubt whether it meant more than that such a law should not be *partial*, but have an equal and *uniform* application in every part of the Union. This is in perfect accordance with the spirit in which various other provisions of the constitution are conceived."

Mr. Justice Washington, who wrote a concurring opinion, was in 1787 a member of the Virginia "House of Debates and in the following year stood beside Madison and Marshall in their advocacy of the Constitution of the United States in the State Convention" (Carson's Hist. Supreme Court, vol. 1, p. 189).

In *Gilman* v. *Sheboygan*, 2 Black, 510, 516, 517, it appeared that the constitution of Wisconsin prescribed that the rule of taxation shall be uniform, and taxes shall be levied upon such property as the legislature shall prescribe. The Court (SWAYNE, J.) held that this meant that all kinds of property not absolutely exempt, must be taxed alike, by the same standard of valuation, equally with other taxable property, *and* co-extensively with the territory to which it applies. It quoted, with approval, the language of the Supreme Court of Wisconsin, in *Knowlton* v. *Supervisors*, 9 Wis., 410, viz.:

> "The provision of the Constitution, that taxes shall be levied upon such property as the legislature shall prescribe, does not sanction a discrimination which provides for taxing a particular kind of property for the support of Government by a different rule from that by which other property is taxed; *for when the kind of property is prescribed the taxation must be uniform*" (p. 516).

The Court also cited, with approval, the fol-

lowing language from *Exchange Bank* v. *Hines*, 3 Ohio St., 1, 15:

> "'Taxing' is required to be 'by a uniform rule'; that is, by one and the same unvarying standard. Taxing by a uniform rule requires uniformity, not only in the rate of taxation, but also uniformity in the mode of the assessment upon the taxable valuation. * * * But this is not all. The uniformity must be co-extensive with the territory to which it applies. If a State tax, it must be uniform all over the State; if a county, town, or city tax, it must be uniform throughout the extent of the territory to which it is applicable."

In the *License Tax Cases*, 5 Wall., 462, 470, Mr. Chief Justice CHASE said:

> "But very different considerations apply to the internal commerce or domestic trade of the States. Over this commerce and trade Congress has no power of regulation nor any direct control. This power belongs exclusively to the States. No interference by Congress with the business of citizens transacted within a State is warranted by the Constitution, except such as is strictly incidental to the exercise of powers clearly granted to the Legislature. The power to authorize a business within a State is plainly repugnant to the exclusive power of the State over the same subject. It is true that the power of Congress to tax is a very extensive power. It is given in the Constitution, with only one exception and only two qualifications. Congress cannot tax exports, and it must impose direct taxes by the rule of apportionment, *and indirect taxes by the* RULE *of uniformity*. Thus limited, and thus only, it reaches every subject, and may be exercised at discretion. But it reaches only existing subjects. Congress cannot authorize a trade or business within a State in order to tax it."

In *Veazie Bank* v. *Fenno*, 8 Wall., 533, 541, Mr. Chief Justice CHASE again said:

> "Direct taxes must be laid and collected by the rule of apportionment; duties, imposts, and excises must be laid and collected under the RULE of uniformity."

In *Ward* v. *Maryland*, 12 Wall., 418, 431, Mr. Justice CLIFFORD said:

> "Inequality of burden, as well as the want of uniformity in commercial regulations, was one of the grievances of the citizens under the Confederation; and the new Constitution was adopted, among other things, to remedy those defects in the prior system."

In *United States* v. *Singer*, 15 Wall., 111, 121, Mr. Justice FIELD said:

> "The law is not in our judgment subject to any constitutional objection. The tax imposed upon the distiller is in the nature of an excise, and the only limitation upon the power of Congress in the imposition of taxes of this character is that they shall be 'uniform throughout the United States.' The tax here is uniform in its operation; THAT IS, IT IS ASSESSED EQUALLY UPON ALL MANUFACTURERS OF SPIRITS WHEREVER THEY ARE. *The law does not establish one rule for one distiller and a different rule for another, but the same rule for all alike.*"

In *Township* v. *Talcott*, 19 Wall., 666, 675, Mr. Justice SWAYNE, in referring to the constitution of Michigan, used the following language:

> "The eleventh clause of the same article declares that the legislature shall provide a uniform rule of taxation, except as to property paying specific taxes,

and that taxes shall be levied upon such property as shall be prescribed by law. The object of this provision was to prevent unjust discriminations. It prevents property from being classified and taxed as classed, by different rules. All kinds of property must be taxed uniformly, or be entirely exempt. The uniformity must be coextensive with the territory to which the tax applies."

In *The Head Money Cases*, 112 U. S., 580, 594, Mr. Justice MILLER said:

> "The tax is uniform when it operates with the same force and effect in *every* place where the subject of it is found. The tax in this case, which, as far as it can be called a tax, is an excise duty on the business of bringing passengers from foreign countries into this, by ocean navigation, is *uniform* AND operates precisely alike in every port of the United States where such passengers can be landed."

In the decision of "*The Head Money Cases*" in the Circuit Court, 18 Fed. Rep., 135, 139, Mr. Justice BLATCHFORD, in addition to pointing out "that the act was not passed in the exercise of the power of laying taxes" but was a regulation of commerce, used the following language:

> "Aside from this, the tax applies uniformly to all steam and sail vessels coming to all ports in the United States, from all foreign ports, with all alien passengers. The tax being a license tax on the business, *the rule of uniformity is sufficiently observed if the tax extends to all persons of the class selected by Congress; that is, to all owners of such vessels.* Congress has the exclusive power of selecting the class. It has regulated that particular branch of commerce which concerns the bringing of alien passengers

> on steam and sail vessels from foreign ports, and has selected such vessels and their owners for taxation everywhere throughout the United States."

It cannot, therefore, be maintained that the opinions in *The Head Money Cases* support the doctrine that Congress may select a particular class of citizens, such as those interested in certain corporations, and provide that their property and income shall be taxed at a higher rate than like property and income of other persons or partnerships, provided the inequality be uniform geographically.

Mr. Justice MILLER, in his lectures on the Constitution, 1889–1890 (pp. 240–241) said:

> "The tax must be uniform on the *particular article;* and it is uniform within the meaning of the constitutional requirement if it is made to bear the *same percentage* over all the United States.
>
> "That is manifestly the meaning of this word, as used in this clause. The framers of the Constitution could not have meant to say that the Government, in raising its revenues, should not be allowed to discriminate between the ARTICLES which it should tax."

In discussing generally the requirement of uniformity found in state constitutions, he said:

> "The difficulties in the way of this construction have, however, been very largely obviated by the meaning of the word 'uniform,' which has been adopted, holding that the uniformity must refer *to articles of the same class. That is, different articles may be taxed at different amounts,* PROVIDED THE RATE IS UNIFORM ON THE SAME CLASS EVERYWHERE, WITH ALL PEOPLE AND AT ALL TIMES."

This definition obviously is not satisfied if property or its income is not taxed at the same percentage throughout the United States, but is taxed at one rate if it is owned by an individual or partnership and an entirely different one if owned by a corporation.

From these authorities, it should follow that the true meaning of the provision requiring duties, imposts and excises to be "uniform throughout the United States" is that the law imposing them should, in the language of Mr. Justice JOHNSON above quoted "have an equal *and* uniform application in every part of the Union."

It is not necessary, in order to establish the unconstitutionality of the law, to show that the framers of the Constitution expressly contemplated a case like the present one.

As was said by Chief Justice MARSHALL, under similar circumstances (*Dartmouth College* v. *Woodward*, 4 Wheaton, 518, 644), viz.:

> "*It is not enough to say, that this particular case was not in the mind of the Convention, when the article was framed, nor of the American people, when it was adopted. It is necessary to go farther, and to say that, had this particular case been suggested, the language would have been so varied, as to exclude it, or it would have been made a special exception. The case being within the words of the rule, must be within its operation likewise, unless there be something in the literal construction so obviously absurd, or mischievous, or repugnant to the general spirit of the instrument, as to justify*

those who expound the constitution in making it an exception."

Moreover, if there be any doubt regarding the intention of the States to make the grant of the right to impose indirect taxes, subject to the condition that such taxes shall be in all respects uniform and impartial, that doubt, under well settled rules, must be resolved, in the interests of justice, in favor of the tax payer (*American Co. v. Worthington*, 141 U. S., 468).

Exemptions from the operation of a tax always create inequalities. Ultimately those not exempted must bear an additional burden or pay more than their share. A tax law which contains arbitrary exemptions cannot in any sense be termed uniform. It is insisted that Congress has no power, at the expense of others, owning property of the same character, to foster and sustain private trading corporations such as (1) building and loan associations, (2) savings banks and (3) mutual life, fire, marine and accident insurance companies, organized under the laws of the various States, which subserve no national purpose or public interest whatsoever, and which exist solely for the pecuniary profit of their members.

The power to exempt is stated to be one of legislative discretion; yet its exercise is not untrammeled. It cannot be arbitrary or capricious.

There must be some principle of public policy which can support the presumption that the public and not private interests will be subserved by the exemptions which are allowed (Cooley on Taxation, 2d ed., p. 201). Private corporations and private enterprises can never be aided under the pretense of the exercise of the discretion to exempt (Cooley on Taxation, p. 170; *Loan Assoc.* v. *Topeka*, 20 Wall., 655; *Parkersburg* v. *Brown*, 106 U. S., 487; *Cole* v. *La Grange*, 113 U. S., 1; *People* v. *Eddy*, 43 Cal., 331, 339; *State* v. *Indianapolis*, 69 Ind., 375, 378; *Barbour* v. *Board of Trade*, 82 Ky., 645, 654, 655; *Railroad Co.* v. *Smith*, 23 Kansas, 745, 751; *Brewer Brick Co.* v. *Brewer*, 62 Maine, 62, 72; *Lexington* v. *McQuillan's Heirs*, 9 Dana, 513, 516, 517; *Sutton's Heirs* v. *Louisville*, 5 Dana, 28, 31).

In Cooley on Taxation (2d ed.), 215, the doctrine is stated as follows:

> "It is difficult to conceive of a justifiable exemption law which should select single individuals or corporations, or single articles of property, and, taking them out of the class to which they belong, make them the subject of capricious legislative favor. Such favoritism could make no pretense to equality; it would lack the semblance of legitimate tax legislation."

In *Barbour* v. *Louisville Board of Trade*, *supra* (82 Ky., 645, 653), the Court (HINES, C. J.), said:

> "As a general rule, the test of the right to exempt

> property is the existence of the right to levy a tax to foster such property. The levy of a direct tax upon the whole people of the state, to be paid to this corporation to forward the objects stated in their charter, would be declared at first blush unconstitutional, and yet that is what is indirectly done by the exemption. If the same power exercised by this corporation had been conferred upon a designated individual, it would strike any one as palpably beyond legislative authority. But there is no difference in principle between the corporation and an individual. If there is the power to exempt the one there is unquestionably the power to exempt the other. It is not every enterprise that is incidentally beneficial to the public that will authorize the state to foster it at the expense of the people at large. The object must appear upon the face of the legislation to be directly for the public good, and of such a character as to call for the aid of the the state to forward it in the exercise of a governmental function."

In the same State, it had previously been declared as the law (*Sutton's Heirs* v. *Louisville*, 5 Dana, 28, 31) that

> "No citizen or class of citizens, owning any property of the kind subjected to taxation, can be exempted constitutionally on any other ground than that of valuable and peculiar public services; for otherwise, one man, or a 'set of men,' might be entitled to enjoy 'exclusive privileges,' or legal exemptions, which are substantially the same, without the only constitutional consideration of public services."

There is nothing in the nature of the corporations or associations favored by the present act or their method of doing business which can possibly be claimed to be of a public or benev-

olent nature. They differ in no essential characteristic from "all other corporations, companies, or associations doing business for profit in the United States" (Sec. 32, Law of 1894).

(1.) *As to building and loan associations.* In Thompson on Building Associations, p. 137, the author says:

> "Building associations have become enormous accumulators of money. Their growth is marvelous and attention is everywhere attracted to them. It is safe to say their assets exceed the combined capital stock of the National banks of the country. Their profits are large and safe. People who have not investigated them are surprised at these statements, yet the facts support them."

The author then shows that the earnings of these associations in Ohio during the year 1891 were over $2,900,000, and that one of them, at Dayton, Ohio, then had a capital of $10,000,000. One such institution in the State of New York in seven years had receipts of over $1,276,000. Pennsylvania has $65,000,000 invested in these associations, and twenty-one of them show an average profit of ten per cent. The figures are of similar import throughout the remaining States (*ibid.*, pp. 137–145; see also Endlich on Building Associations, § 39; *State* v. *Hornbaker*, 41 N. J. Law, 519; *Bibb County Loan Ass.* v. *Richards*, 21 Ga., 592, 596).

(2.) *As to savings banks, savings institutions or societies.* Under all the income tax laws prior

to 1870, these institutions were specifically taxed. Under the new law, selected institutions of this class are absolutely exempt provided the shareholders do not participate in the profits, and interest and dividends are only paid to the depositors. There is no limit fixed to the property and income thus exempted; it may be $100,000 or $100,000,000.

As the Supreme Court of Pennsylvania (AGNEW, J.) said in *West's Appeal*, 64 Pa. St., 186, 193, referring to a similar concern:

> "It has not the semblance of a charity. It is specifically a business corporation for pecuniary purposes; to receive deposits of money, invest them for the security of the depositors, and repay them with interest."

In *Coite* v. *Soc. for Savings*, 32 Conn., 173, 185, the Court (MCCURDY, J.) said:

> "There is no reason why they should not contribute their full share to support the government through which they exist and flourish. At first their number and deposits were so small, and their objects and results so beneficent, that they were properly relieved from the common burden. They have since been found so advantageous, not only to the humble few whose interests they were expected to subserve, but to the public at large, that in this state they have attracted to their vaults nearly thirty millions of dollars. They act under charters from the state for which other banks formerly paid high premiums. Their franchise confers privileges of great value."

This case was affirmed by this Court, viz.: *Society for Savings* v. *Coite*, 6 Wall., 594, 607.

(3.) *Mutual insurance corporations.* Mutual insurance companies were specifically taxed under the prior income tax laws. (Secs. 120 and 122, L. 1864; Secs. 119 and 122; Sec. 15, L. 1870.) Their methods of doing business differ somewhat from other insurance companies; but they conduct a strictly private business in which the public has absolutely no interest, and have been repeatedly held to be in no sense benevolent or charitable organizations. (16 Am and Eng. Encycl. of Law, pp. 17, 18 and 20*n.*; *Union Ins. Co.* v. *Hoge*, 21 How., 35, 64; *Mygatt* v. *Ins. Co.*, 21 N. Y., 52, 58, 65; *People* v. *Nelson*, 46 N. Y., 477, 479; *State* v. *Vigilant Ins. Co.*, 30 Kansas, 585, 588; *Wardle* v. *Townsend*, 75 Mich., 385, 391; *State* v. *Benefit Association*, 6 Mo. App., 163, 171; *State* v. *Merchants' Ex. Mutual Benevolent Soc.*, 72 Mo., 146, 167; *State* v. *McGrath*, 95 Mo., 193, 196; *Co-operative Fire Ins. Order* v. *Lewis*, 12 Lea (Tenn.), 136, 139; *Last* v. *London Ass. Corporation*, L. R., 10 App. Cas., 438, 451; *Foster* v. *Moulton*, 35 Minn., 458; *Farmer* v. *State*, 69 Texas, 561, 567.)

The sole condition for exempting these favored corporations and associations is declared to be that they make loans to, or divide their profits among, their members or depositors or policyholders. Every corporation is carried on for the

benefit of its members, and it can make no difference whether they are called shareholders or depositors or policy-holders. No such exemption was ever made before. On the contrary, the business of mutual savings banks and insurance companies and associations was expressly selected for taxation under the prior laws. If the business of an insurance company or savings bank is now carried on for the benefit of its shareholders, every dollar of income is taxed; if it is carried on for the benefit of its policy-holders or depositors, who are but another form of shareholders, it is wholly exempted.

The census reports will show the immense accumulations of estates in the hands of these exempted corporations and associations. In the State of New York, the Act exempts the income of over $1,000,000,000 of property. One well known instance in the City of New York may serve to point out the character of this discrimination. The leading mutual life insurance company now has property exceeding $204,000,000 in value, which is wholly exempted. The insertion of the exemption saved that particular institution fully $200,000 a year in taxes! It thus has an advantage of $200,000 a year over other insurance companies and associations having like property and carrying on the same business simply because such other

companies or associations divide their profits among their shareholders instead of their policy-holders. By reason of this favoritism, it can offer better terms of insurance and more advantageous results than the ordinary companies or associations conducted under the stock plan.

In this connection, the following supposition is worthy of the most careful consideration:

Suppose the policy of the last Congress reversed (18 F. R., 437), and that the majority favored corporate investments, and believed that the development and encouragement of corporate enterprises would bring about a speedy return of prosperity and confidence and thus benefit the working classes whose votes are so controlling. Suppose that, influenced by some such popular notion of policy, Congress should pass an income tax law taxing individuals and partnerships, but exempting all corporations. It would try the patience of the Court to attempt to uphold such legislation. Yet, the principles involved in the present law are the same. If discrimination and inequality and class legislation in any form be tolerated, no one can foresee to what extremes a majority in Congress may not be carried.

If savings banks and all insurance companies were proper subjects for special taxation under the former acts, have the nature and

methods of doing business of *mutual* insurance and savings institutions undergone so great a change in a few years, as to now justify exemption from taxation, or have they become so rich and powerful that they can demand special privileges and exemptions? It is perfectly clear that within a short time every stock insurance company and savings bank may be driven out of business, and that the mutual insurance companies and savings banks, fostered and aided by Congress, will amass still greater sums. Yet, are they secure? Is there any safety? Is any one secure, when partial and unequal tax burdens are permitted among those engaged in the same business? A change in the humor of the multitude of voters, and a new set of legislators, may produce a law exempting stock insurance companies, and imposing ruinous and discriminating taxes on mutual companies. A strike of the workmen employed by the Dayton Building Association, which has $10,000,000 of capital, may lead a sympathetic Congress to pass a law heavily taxing building and loan associations that make advances to their shareholders, and deny them to the poor laborer; on the ground that it is against public policy to confine the loans to members and deny assistance to outsiders. Congress may then exempt the building and loan com-

panies now taxed. The majority in Congress may decide that mutual savings banks are getting too rich, and are really injurious to the laborer, in that they tie up money which ought to be employed in speculation and trade and scattered in high wages, and that they should be destroyed. Mutual insurance companies may become so powerful, if they are not now, that they can, for example, dictate the terms upon which they will take government bonds. An excited Congress, grasping and wielding the precedent of this Act, may then impose any burden it sees fit on these mutual insurance companies and ruin them under the pretense of taxation. Such class legislation would mean chaos of the principles which for a century have been supposed to be embodied in the Constitution of the United States, and the commencement thereof should be firmly condemned and prevented.

If the exemptions are invalid, the whole act must fall (See cases, Point X). As was stated by Mr. Justice MATTHEWS in *Spraigue* v. *Thompson*, 118 U. S., 90, 94, an exception which cannot be rejected without causing an act to provide what a legislature never intended, must cause the whole statute to be declared invalid, viz.:

> "But the insuperable difficulty with the application of that principle of construction to the present instance is, that by rejecting the exceptions intended by the legislature of Georgia the statute is

made to enact what confessedly the legislature never meant. It confers upon the statute a positive operation beyond the legislative intent, and beyond what any one can say it would have enacted in view of the illegality of the exceptions."

VI.

IRRESPECTIVE OF CONSTITUTIONAL LIMITATIONS, TAXES MUST BE UNIFORM OR EQUAL ON THE SAME CLASS OF PROPERTY.

There is no such thing in the theory of our national government as unlimited power in Congress. There are limitations of its powers which arise out of the essential nature of all free governments: implied reservations of individual rights, without which the social compact could not exist, and which are respected by all governments entitled to the name. The right of taxation is subject to these limitations. (MILLER, J., in *Loan Assoc.* v. *Topeka*, 20 Wall., 655. See also *Parkersburg* v. *Brown*, 106 U. S., 487; *Cole* v. *La Grange*, 113 U. S., 1.)

Consequently, it is submitted, the grant to Congress of the power to tax contained the implied limitation that all tax laws should apply equally, impartially and uniformly to all similarly situated.

The inherent and fundamental nature and character of a tax is a contribution to the

support of the government, levied upon the principle of equal and uniform apportionment among the persons taxed. Any other exaction does not come within the legal definition of a tax.

> "Everything that may be done under the name of taxation is not necessarily a tax; and it may happen that an oppressive burden imposed by the government, when it comes to be carefully scrutinized, will prove, instead of a tax, to be an unlawful confiscation of property, unwarranted by any principle of constitutional government.
>
> "In the second place, it is of the very essence of taxation that it be levied with equality and uniformity, and to this end, that there should be some system of apportionment. Where the burden is common, there should be common contribution to discharge it. Taxation is the equivalent for the protection which the government affords to the persons and property of its citizens; and as all are alike protected, so all alike should bear the burden, in proportion to the interests secured. * * * Taxes may assume the form of duties, imposts, and excises; and those collected by the national government are very largely of this character. * * *
>
> "Whatever may be the basis of the taxation, the requirement that it shall be uniform is universal."
>
> Cooley's Constitutional Limitations, 6th ed., 598, 607, 608, 615.

> "Equality, indeed, so far as practicable, is inherent in the very idea of a tax as distinguished from arbitrary exaction."
>
> Dillon on Municipal Corporations, Sec. 736.

> "Taxation * * * implies that the imposition

Davis v. *Litchfield*, 145 Illinois, 313, 327; *City of Lexington* v. *McQuillan*, 9 Dana, 513; *State* v. *Township*, 36 N. J. Law, 66; *State* v. *Mayor*, 8 Vroom, 415; *Tide-Water Co.* v. *Coster*, 18 N. J. Eq., 518; *State* v. *Express Co.*, 60 N. H., 219, 252; *Gatlin* v. *Town*, 78 N. C., 119, 122; *Durach's Appeal*, 62 Pa. St., 491, 494; *Taylor* v. *Chandler*, 9 Heisk, 349, 356; see also *Washington Avenue*, 69 Penna. St., 352, 363; *Hammett* v. *Penna.*, 65 Penna. St., 146, 153; *County* v. *Commissioners*, 50 Md., 245, 260; *Ryerson* v. *Utley*, 16 Mich., 269; *McCormack* v. *Patchin*, 53 Mo., 33.

The legislative power to impose taxes is, therefore, *ex vi termini*, a power to impose taxes which shall be equal and uniform as among the owners of the classes of property selected for taxation This is especially the case with Congress, which has no powers save those expressly given, and which must act according to the rule of liberty regulated by just and *impartial* laws (*Loan Association* v. *Topeka*, 20 Wall., 655, 662; *Coe* v. *Errol*, 116 U. S., 517, 524, 529; *Soon Hing* v. *Crowley*, 113 U. S., 703, 709; *Mugler* v. *Kansas*, 123 U. S., 623, 661). In the absence of any power expressly granted to it, and aside from the provisions of the Constitution forbidding such action, Congress would have no power to tax owners of the same

class of property at varying rates. Such action is not taxation (*Loan Assoc.* v. *Topeka*, 20 Wall., 655, 664).

VII.

THE PROVISIONS OF THE FIFTH AMENDMENT, PRESCRIBING DUE PROCESS OF LAW AND JUST COMPENSATION IF PRIVATE PROPERTY BE TAKEN FOR PUBLIC USE, RESTRAIN THE FEDERAL GOVERNMENT FROM ENFORCING UNEQUAL AND PARTIAL TAX LAWS.

The first ten amendments to the Constitution of the United States were adopted for the purpose of limiting and restricting the national government within the authority expressly granted. (*Barron* v. *Baltimore*, 7 Pet., 243, 247; *Spies* v. *Illinois*, 123 U. S., 131, 166.) They originated in the apprehension of the people that powers not intended to be conferred might be claimed by the Federal government, and that there might be an abuse of the taxing power (*Livingston* v. *Mayor*, 8 Wend., 85, 100; *M'Culloch* v. *State of Maryland*, 4 Wheaton, 316, 433).

The Fifth Amendment, adopted in order to restrict the powers of the national government, provides that—

"NO PERSON * * SHALL BE DEPRIVED OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF

LAW; NOR SHALL PRIVATE PROPERTY BE TAKEN FOR PUBLIC USE, WITHOUT JUST COMPENSATION."

In the *Sinking Fund Cases*, 99 U. S., 700, 718, Chief Justice WAITE said:

> "The United States * * * equally with the States are prohibited from depriving persons or *corporations* of property without due process of law."

There are only two methods by which the Government can take private property: the one through the taxing power, the other through the right of eminent domain. The fundamental distinction between these two methods is that under the taxing power, the laws and exactions must be uniform and impartial—a common contribution or burden—equally affecting all within the class or subject selected; while under the exercise of the right of eminent domain particular or special property is singled out for public use and to make contributions to public purposes which are not demanded of other property of the same general character (*People* v. *Mayor*, 4 N. Y., 419, 424).

In *Lowell* v. *Boston*, 111 Mass., 454, 461, 462, the Supreme Judicial Court of Massachusetts used the following language:

> "The principle of this distinction is fundamental. It underlies all government that is based upon reason rather than upon force. * * * This power, when exercised in one form, is taxation; in the other, is designated as the right of eminent domain. The two are diverse in respect of the

> occasion and mode of exercise, but identical in their source, to wit, the necessities of organized society; and in the end by which alone the exercise of either can be justified, to wit, some public service or use."

But the power of eminent domain is conditioned upon making just compensation, so that in that case also the principle of equality shall prevail, and the public burdens shall not be borne merely by specific individuals or specific property selected out of the same general class.

In *Hurtado* v. *California*, 110 U. S., 516, 535, 536, Mr. Justice MATTHEWS said:

> "*But it is not to be supposed that these legislative powers are absolute and despotic, and that the amendment prescribing due process of law is too vague and indefinite to operate as a practical restraint. It is not every act, legislative in form, that is law. Law is something more than mere will exerted as an act of power.* * * * Arbitrary power, enforcing its edicts to the injury of the persons and property of its subjects, is not law, whether manifested as the decree of a personal monarch or of an impersonal multitude."

Accordingly it has been repeatedly held that process of law is due only when it operates on all alike. That, in fact, is the test. "Due process of law * * is secured by laws operating on all alike, and not subjecting the individual to an arbitrary exercise of the powers of government unrestrained by the established principles of private rights and distributive justice" (*Leeper* v. *Texas*, 139 U. S., 462, 468; *Giozza* v. *Tiernan*, 148 U. S., 657, 662).

In *Duncan* v. *Missouri*, 152 U. S., 377, 382, Chief Justice FULLER said:

> "And due process of law and the equal protection of the laws are secured if the laws operate on all alike, and do not subject the individual to an arbitrary exercise of the powers of government."

In *Caldwell* v. *Texas*, 137 U. S., 692, 697, Chief Justice FULLER said:

> "Law, in its regular course of administration through courts of justice, is due process, and when secured by the law of the State, the constitutional requisition is satisfied. 2 Kent Comm., 13. AND DUE PROCESS IS SO SECURED BY LAWS OPERATING ON ALL ALIKE, AND NOT SUBJECTING THE INDIVIDUAL TO THE ARBITRARY EXERCISE OF THE POWERS OF GOVERNMENT, UNRESTRAINED BY THE ESTABLISHED PRINCIPLES OF PRIVATE RIGHT AND DISTRIBUTIVE JUSTICE. *Bank of Columbia* v. *Okely*, 4 Wheat., 235, 244. THE POWER OF THE STATE MUST BE EXERTED WITHIN THE LIMITS OF THOSE PRINCIPLES, AND ITS EXERTION CANNOT BE SUSTAINED WHEN SPECIAL, PARTIAL AND ARBITRARY. *Hurtado* v. *California*, 110 U. S., 516, 535."

It follows, therefore, that a law which imposes a tax upon the property of one person while others owning like property are exempted or taxed at a lower rate is within the constitutional inhibition against taking property without due process of law.

In *Davidson* v. *New Orleans*, 96 U. S., 97, 107, Mr. Justice BRADLEY said:

> "It seems to me that private property may be taken by a State without due process of law in other ways than by mere direct enactment, or the want of a judicial proceeding. If a State, by its laws,

> should authorize private property to be taken for public use without compensation (except to prevent its falling into the hands of an enemy, or to prevent the spread of a conflagration, or, in virtue of some other imminent necessity, where the property itself is the cause of the public detriment), I think it would be depriving a man of his property without due process of law. * * * In judging what is 'due process of law,' respect must be had to the cause and object of the taking, whether under the taxing power, the power of eminent domain, or the power of assessment for local improvements, or none of these: and if found to be suitable or admissible in the special case, it will be adjudged to be 'due process of law'; but if found to be arbitrary, oppressive, and unjust, it may be declared to be not 'due process of law.'

In *Giozza* v. *Tiernan*, 148 U. S., 657, 662, Chief Justice FULLER used the following language:

> "Nor, in respect of taxation was the (fourteenth) amendment intended to compel the States to adopt an iron rule of equality. * * * *It is enough that there is no discrimination in favor of one as against another of the same class.* And *due process of law* within the meaning of the amendment is secured if the laws operate on all alike, and do not subject the individual to an arbitrary exercise of the powers of government."

In support of these principles, reference may be made also to the following cases in the State courts contained in the appendix: *Mayor* v. *Dargan*, 45 Ala., 310, 319; *Morford* v. *Unger*, 8 Iowa, 82; *City* v. *McQuillan*, 9 Dana, 513; *Northampton* v. *Commrs.*, 145 Mass., 108;

Tidewater Co. v. *Coster*, 18 N. J. Eq., 518; *State* v. *Township*, 36 N. J. Law, 66; *State* v. *Express Co.*, 60 N. H., 219, 252; *Durach's Appeal*, 62 Pa. St., 491, 494.

VIII.

CONGRESS, THEREFORE, HAS NO POWER TO ASSESS A TAX UPON THE SAME SUBJECT-MATTER AT DIFFERENT RATES AS BETWEEN INDIVIDUALS AND CERTAIN SELECTED PRIVATE CORPORATIONS, OR AT RATES VARYING MERELY BY REASON OF DIFFERENCE OF OWNERSHIP.

A.

The true nature of private corporations is frequently ignored.

Private trading corporations, such as the defendant trust companies, are merely associations of individuals united for a special purpose or legitimate business, under the laws of the various States. They exercise no power of eminent domain and perform no public duties (*Hamilton* v. *Massachusetts*, 6 Wall., 632, 638). In most instances, they possess no rights or privileges which individuals united as partners could not exercise, except that in some instances (but not always) the members of the corporate associations are free from individual liability for the acts of the

association in a corporate capacity. Any thirteen or more persons could form similar companies under the general laws of the State of New York (L. of 1887, Ch. 546). A partnership could do business under any name the associates saw fit to adopt, and they could provide for a succession of members without dissolution. Private trading corporations *derive no power and obtain no privilege or franchise whatever from the Federal government,* and so far as the latter is concerned, are merely associations of individual citizens.

While a corporation may, from one point of view, be considered as an entity without regard to the corporators who compose it, the fact remains self-evident that a corporation is not *in reality* a person or a thing distinct from its constituent parts. The word "corporation" is but a collective name for the corporators or members who compose an incorporated association; and when it is said that a corporation is itself a person, or being, or creature, this must be understood in a figurative sense only.

In *Kansas Pacific* v. *Atchison Railroad*, 112 U. S., 414, 415, Mr. Justice FIELD said:

> "A private corporation is, in fact, but an association of individuals united for a lawful purpose and permitted to use a common name in their business, and to have a change of members without dissolution."

In *McKinley* v. *Wheeler*, 130 U. S., 630, 633, Mr. Justice FIELD again said:

> "THEY ARE LITTLE MORE THAN AGGREGATIONS OF INDIVIDUALS UNITED FOR SOME LEGITIMATE BUSINESS, ACTING AS A SINGLE BODY, WITH THE POWER OF SUCCESSION IN ITS MEMBERS WITHOUT DISSOLUTION. We think, therefore, that it would be a forced construction of the language of the section in question, if, because no special reference is made to corporations, a resort to that mode of uniting interests by different citizens was to be deemed prohibited."

The property of a corporation is really and beneficially, though not in form, the property of the individual citizens who compose it, although the title is vested in the aggregation of owners collectively through the use of the corporate name and the convenient fiction of an intangible and invisible entity. The constituents of the corporation, the citizens who compose it, are the real parties in interest, and the Court will deal with them—not with names or forms, but with substance and reality. To deprive a corporation of its property or to burden it is, in fact, to deprive the corporators of *their* property. The guaranties and safeguards of the Constitution of the United States for the protection of the property and rights of individuals apply equally and as efficaciously for the protection of the property of corporations. (*Bank U. S.* v. *Deveaux*, 5 Cranch, 61, 88, 91; *United States* v. *Amedy*, 11 Wheaton, 392,

412. *Providence Bank* v. *Billings*, 4 Peters, 514, 562; *Marshall* v. *B. & O. R.R. Co.*, 16 How., 314, 327; *Pembina Mining Co.* v. *Pennsylvania*, 125 U. S., 181, 188.)

B.

The defendant trust companies are private corporations of the State of New York. They owe their existence, their capacity to contract, their right to sue and to carry on their business as corporate units or entities, to the law of the State under which they are organized. It is the public policy of that State to foster and encourage the formation of corporations under its laws (*Demarest* v. *Flack*, 128 N. Y., 205, 217). Its statutes provide for their ready and easy formation as a means of attracting business, commerce and property, and inducing investment of capital within its borders. A large part of the revenue of the state government is derived from the taxation of these corporations in the form of a franchise tax or license upon the privilege to do business which the State grants to its own corporations and extends to foreign corporations by comity.

If Congress can discriminate against corporations created under the laws of the States by taxing their property and income at a higher rate than that imposed upon individuals and part-

nerships, the power of the States to create such corporations as they see fit may be practically defeated or rendered useless (*Wisconsin Co.* v. *Price County*, 133 U. S., 496, 504). To use the language of Chief Justice MARSHALL (4 Wheat., 431): "The power to tax involves the power to destroy," and "THE POWER TO DESTROY MAY DEFEAT AND RENDER USELESS THE POWER TO CREATE."

The power to create, as well as to regulate the management and affairs of state corporations, belongs exclusively to the States. Congress cannot interfere with business transacted within a State by citizens, or state corporations as aggregations of citizens. It could not constitutionally pass any law creating a private trading corporation or trust company, or regulating the management or control of these state corporations, or exonerating them from the performance of any duties or the payment of any taxes or contributions to which their position as creatures of state legislation renders them liable. Congress has no power of regulation or control, for in matters concerning their internal affairs, the States are supreme (*License Tax Cases*, 5 Wall., 462, 470; *Lane County* v. *Oregon*, 7 Wall., 71, 76; *Texas* v. *White*, 7 Wall., 700, 725; *Ex parte Virginia*, 100 U. S., 339, 357).

To repeat, if Congress could discriminate against

the property or income of private corporations organized under the laws of the various States, by taxing their property or income at a higher rate than that imposed upon like property and income of individuals, the Federal government could then defeat and render useless the power of the States to create private corporations. It could practically destroy such corporations or drive them out of business. If the power to discriminate under the guise of taxation exists, it knows no limit, and carries with it inherently the power to tax oppressively, and to embarrass or destroy.

The language of Mr. Justice HUNT, in *U. S.* v. *Railroad Company*, 17 Wall., 322, 327, may be applied instructively to the suggestion that Congress cannot tax the franchise of a state corporation, any more than the States can tax a Federal corporate franchise, viz.:

> "If they may be taxed lightly, they may be taxed heavily; if justly, oppressively. Their operation may be impeded and may be destroyed, if any interference is permitted. Hence, the beginning of such taxation is not allowed on the one side, is not claimed on the other."

In *M'Culloch* v. *State of Maryland*, 4 Wheaton, 316, 431, Chief Justice MARSHALL said:

> "That the power to tax involves the power to destroy; *that the power to destroy may defeat and render useless the power to create*; that there is a

plain repugnance, in conferring on one government a power to control the constitutional measures of another, which other, with respect to those very measures, is declared to be supreme over that which exerts the control, are propositions not to be denied. But all inconsistencies are to be reconciled by the magic of the word CONFIDENCE. Taxation, it is said, does not necessarily and unavoidably destroy. To carry it to the excess of destruction would be an abuse, to presume which, would banish that confidence which is essential to all government."

Chief Justice MARSHALL again said in *Weston* v. *Charleston*, 2 Peters, 449, 466:

"If the right to impose the tax exists, it is a right which in its nature acknowledges no limits. It may be carried to any extent within the jurisdiction of the state or corporation which imposes it, which the will of each state and corporation may prescribe."

In *Loan Association* v. *Topeka*, 20 Wall., 655, 663, Mr. Justice MILLER said:

"The power to tax is, therefore, the strongest, the most pervading of all the powers of government, reaching directly or indirectly to all classes of the people. It was said by Chief-Justice Marshall, in the case of McCulloch *v.* The State of Maryland, that the power to tax is the power to destroy. A striking instance of the truth of the proposition is seen in the fact that the existing tax of ten per cent. imposed by the United States on the circulation of all other banks than the National banks, drove out of existence every State bank of circulation within a year or two after its passage. This power can as readily be employed against one class of individuals and in favor of another, so as to ruin the one class and give unlimited wealth and prosperity to the other, if there is no implied

limitation of the uses for which the power may be exercised."

C.

If it be contended that discrimination against corporations has been sanctioned in the past by some notion of public policy, because of the prejudice against them in old times (when they usually exercised monopolies), the language of PECKHAM, J., in the New York Court of Appeals (*Demarest* v. *Flack*, 128 N. Y., 205, 214) must be a sufficient answer, viz.:

> "IT MAY BE SAFELY SAID THERE CAN BE NO SUCH DOMESTIC POLICY AT THE PRESENT DAY IN A CIVILIZED STATE."

The discrimination in the act of 1894 against certain corporations cannot be upheld upon the ground that Congress may classify the various kinds of property or the various kinds of business for purposes of taxation. Under this power of classification, Congress may, in its discretion, tax certain kinds of property and omit other property, or may tax certain occupations (such as the business of insurance, banking, distilling, &c.) and omit other occupations; but it cannot impose a tax at one rate upon the property or business of corporations and at a different rate upon the same property or the same business if owned or carried on by individuals or partnerships.

If the difference in the rate of taxation is not based on the nature of the property, nor on the use made of the property, irrespective of its ownership, then it is based on OWNERSHIP and involves a discrimination against particular owners. So, if a license duty or excise tax upon a privilege or occupation does not apply to all who exercise the same privilege or pursue the same occupation, but to particular individuals only, then it is the arbitrary selection of a few to bear an unjust proportion of the burden of taxation. Classification, to be lawful, must distinguish between different kinds of property, not different ownership, or between different business pursuits, not between particular or selected individuals or corporations of the same class. In the present case, Congress has not even taken corporations as a class, but has exempted hundreds of favored corporate institutions and associations while taxing others under precisely similar conditions.

This Court has repeatedly recognized the power of the *States* to select corporations as a particular class for taxation upon their franchises. In each instance, however, the tax has been upheld upon the ground that a state legislature could impose any burden it saw fit upon the corporate franchise, license or privilege which it created and conferred, and that such legislation

was "not open to objection if all such bodies are treated alike under similar circumstances and conditions, in respect to the *privileges* conferred upon them and the *liabilities* to which they are subjected" (*Home Ins. Co.* v. *New York*, 134 U. S., 594, 606, 607; *Maine* v. *Grand Trunk R'y Co.*, 142 U. S., 217, 227). The Court has also adjudged that the States may select railroad property as a class of property to be taxed separately because of its peculiar and inherent nature and its essential difference from other property (*Kentucky Railroad Tax Cases*, 115 U. S., 321, 337, 339). In other instances, the peculiarity of a particular class, *e. g.*, express companies, and "their different nature, character and means of doing business," were held to "justify the discrimination in this respect, which the legislature has seen fit to impose" (*Pacific Express Co.* v. *Seibert*, 142 U. S., 339, 354). In such cases as *Western Union Tel. Co.* v. *Massachusetts*, 125 U. S., 530, the law was sustained only on the ground that it was a tax on the property in Massachusetts, and all other grounds were repudiated. There is no case in this Court, and so far as a careful investigation has disclosed, no case in any state report, sustaining a law which imposed a tax upon the real or personal property of domestic or foreign corporations (as distinguished from a tax upon franchises) at a

higher rate than that laid upon similar property of individuals or partnerships. The cases in the state courts distinctly hold that such a law cannot be sustained (*Mayor* v. *Co.*, 53 Ala., 570, 580, 581; *Bureau Co.* v. *Railroad Co.*, 44 Ill., 229; *Standard Insurance Co.* v. *Assessors*, 95 Mich., 466; *State Board of Assessors* v. *Central R.R. Co.*, 48 N. J. Law, 146, 304; *Fox's Appeal*, 112 Pa. St., 337, 353).

The claim has been made that the case of *Bell's Gap Railroad Co.* v. *Pennsylvania*, 134 U. S., 232, 236, to some extent supports the right to tax the property of corporations at a different rate from the property of individuals. But this is an error. In the case referred to, the question was as to the constitutionality of a statute of Pennsylvania which subjected all moneyed securities to an annual tax of three mills on the dollar of their actual value, except bonds and other securities issued by corporations, which were taxed at three mills on the dollar of nominal or par value. It was contended that this was a discrimination against corporate securities and in violation of the protection afforded by the Fourteenth Amendment.

The court (*Commonwealth* v. *Delaware Div. Canal Co.*, 123 Pa. St., 594, 623) sustained the statute, saying:

"Classification for purposes of taxation, as a gen-

> eral rule, is a matter for the legislature; it is the uniformity of taxation, according to that classification, which is for the courts, and it is plain that the act of 1885, having constituted corporate loans in the hands of resident holders a distinct class, does not discriminate against any member of that class. THE TAX IS NOT UPON THE CORPORATION, IT IS UPON THE HOLDER OF THE CORPORATE BONDS; AND THE HOLDER MAY BE AN INDIVIDUAL, A PARTNERSHIP, A BANKER OR BROKER, OR A PRIVATE CORPORATION; THE LAW IS GENERAL, AND APPLIES TO ALL HOLDERS. Whether the tax is paid or not is a matter of indifference to the corporation, for if they pay it, they may defalk it from the interest."

Upon error, this was accepted by the Supreme Court as a correct interpretation of the statute, the Court (BRADLEY, J., 134 U. S., 232, 236), saying:

> "There is no unjust discrimination against any persons or corporations. The presumption is that corporate securities are worth their face value."

Under the prior income tax laws, no attempt was made to discriminate against corporations simply as such. A few distinct classes of corporations were selected because of the peculiar business conducted by them. Thus, in the case of the bank tax, the duty or excise was imposed upon the act of issuing bank notes, not upon the property or income of the bank (*Veazie Bank* v. *Fenno*, 8 Wall., 533, 547). So, also, in the case of insurance companies, as Mr. Justice SWAYNE distinctly pointed out in *Pacific Ins. Co.* v. *Soule* (7 Wall., 433, 446), "the tax was

upon the *business* of an insurance company"; and the same was said of the tax as being upon the *business* of railroad companies (*Railroad Co.* v. *Collector*, 100 U. S., 595, 598).

D.

Congress has no constitutional power to tax the mere privilege or franchise to carry on business as a corporation which the various States may grant to their citizens.

What is called the franchise of forming a corporation is really but an exemption from a general rule of the common law prohibiting the formation of corporations. In former times, this exemption was granted only in exceptional cases, by a special charter in each instance. It was, therefore, looked upon as something valuable,—as a gift of a special privilege to the grantees of the charter,—and was called a "franchise." At the present day, however, the prohibition of the common law has been in great measure repealed by the general incorporation laws. What was formerly the exception has become the general rule. All persons have now the right of forming corporate associations upon complying with the simple formalities provided by statute. The right of forming a corporation and of acting in a corporate capacity under the general incor-

poration laws, can be called a "franchise" only in the sense in which the right of forming a limited partnership or of executing a conveyance of land by deed is a franchise.

In *Lumberville, &c., Co.* v. *State Board of Assessors*, 55 N. J. Law, 529, 537, the Supreme Court of New Jersey (GARRISON, J.) recognizes the true nature of the naked privilege or franchise to exist as a corporation, viz.:

> "The franchise that is taxed as property is the privilege enjoyed by a corporation of exercising certain powers derived from the state, whereas the franchise with which we have to do is the right to exist in corporate form without reference to the powers that under such form the company may exercise. This distinction, although formulated by Mr. Justice Field in *Home Insurance Co.* v. *New York*, 134 U. S., 594, was not strictly adhered to in his subsequent expressions, probably because there was nothing in that case to call for a nice use of terms. In this state we tax each of these so-called franchises. The former, as in the case of the right to own and operate a railroad, is taxed as property having a true value, which it is the duty of the state board to ascertain for the purposes of constitutional assessment. On the other hand, the naked right of existing in corporate form is taxed as in the case before us, not at its true value, as it would have to be if it were property, but at a sum arbitrarily imposed by the legislature as an annual fee, the amount of which is to be computed by reference to the capital of the company as a criterion. It is in short a poll tax levied upon domestic corporations for the right to be. Such a tax is not upon property or assets, and does not in any way concern the

nature of the business the company may be authorized to carry on. If the business chance to be one of commercial intercourse with other states, the burden incidental to corporate existence does not, under the federal decisions just cited, constitute a regulation of that commerce."

In *Memphis Railroad Co.* v. *Commissioners*, 112 U. S., 609, 619, Mr. Justice MATTHEWS, in delivering the opinion of the Court, points out clearly the essential distinction between the simple franchise to be a corporation, which is never a subject of sale and transfer, and the franchises which a company may have the right to exercise.

The reasons which prevent a State from taxing corporate franchises granted by Congress would equally prevent Congress from taxing the franchise of state corporations. The franchise of a national bank could not be taxed by a State, any more than shares of stock in such a bank would be subject to state taxation without the consent of Congress (*Talbott* v. *Silver Bow County*, 139 U. S., 438, 440; *Railroad Co.* v. *Peniston*, 18 Wall., 5, 43).

In *West River Bridge Co.* v. *Dix*, 6 How., 507, 548, Mr. Justice WOODBURY said that a contract of incorporation "may be taxed by the government under which it is held, though not by other governments so as to impair or obstruct it."

In *California* v. *Pacific Railroad Co.*, 127 U. S., 1, 41, Mr. Justice BRADLEY said:

> "In view of this description of the nature of a franchise, how can it be possible that a franchise granted by Congress can be subject to taxation by a State without the consent of Congress? Taxation is a burden, and may be laid so heavily as to destroy the thing taxed, or render it valueless. As Chief Justice MARSHALL said in McCulloch *v.* Maryland, 'The power to tax involves the power to destroy.' Recollecting the fundamental principle that the Constitution, laws and treaties of the United States are the supreme law of the land, it seems to us almost absurd to contend that a power given to a person or corporation by the United States may be subjected to taxation by a State. The power conferred emanates from, and is a portion of, the power of the government that confers it. To tax it, is not only derogatory to the dignity, but subversive of the powers of the government, and repugnant to its paramount sovereignty. * * * The taxation of a corporate franchise merely as such, unless pursuant to a stipulation in the original charter of the company, is the exercise of an authority somewhat arbitrary in its character. It has no limitation but the discretion of the taxing power. The value of the franchise is not measured like that of property, but may be ten thousand or ten hundred thousand dollars, as the legislature may choose. Or, without any valuation of the franchise at all, the tax may be arbitrarily laid. It is not an idle objection, therefore, made by the company against the tax imposed in the present cases."

The taxation of special classes of corporations under the prior income tax laws was upheld, upon the distinct ground, as above stated, that it was a tax on the *business* or *occupation*,

and not on property or franchise as such (*Pacific Ins. Co.* v. *Soule*, 7 Wall., 433, 446). In *Railroad Co.* v. *Collector*, 100 U. S., 595, 598, Mr. Justice MILLER, delivering the opinion of the Court, said:

> "THE TAX, IN OUR OPINION, IS ESSENTIALLY AN EXCISE ON THE BUSINESS OF THE CLASS OF CORPORATIONS MENTIONED IN THE STATUTE."

The case last cited is referred to by this Court in *Railroad Co.* v. *U. S.*, 101 U. S., 543, 550; *U. S.* v. *Erie Railway Co.*, 106 U. S., 327, 337, 703; *Memphis & Charleston R.R. Co.* v. *U. S.*, 108 U. S., 228, 234; see also, *U. S.* v. *Louisville & N. R.R. Co.*, 33 F. R., 829, 831.

Even if the Court were inclined to uphold the power of Congress to tax the mere privilege or franchise to be a corporation which is conferred by the States, it is submitted that this act does not purport to levy a franchise tax and was not framed upon any such theory. All possessing such privilege or franchise are not created a class and subjected to taxation by reason thereof. On the contrary, the tax is imposed upon the income of a number of those possessing the franchise, but not upon the income of numerous other aggregations of individuals equally possessing and exercising the privilege to be a corporation, and it is imposed not merely on corporations but on companies or associations, "no matter how created and

organized." The discrimination is leveled also at organizations not possessing any corporate franchise, and it does not apply to all of any class, whether corporate or otherwise.

Manifestly, therefore, such a statute cannot be deemed to have classified the mere corporate privilege or franchise granted by the States as a basis for taxation. Whatever may be the power of Congress, it has as yet made no effort to impose such a franchise tax, and the act under discussion cannot be sustained on any such ground.

E.

The whole subject of classification in tax laws has been considered so exhaustively by Mr. Justice FIELD in the California Railroad Tax Cases that the position of the appellants cannot be better stated than by quoting at length from those decisions.

In *San Bernardino Co.* v. *Southern Pacific R. R.*, 118 U. S., 417, 422, Mr. Justice FIELD said:

> "At the present day nearly all great enterprises are conducted by corporations. Hardly an industry can be named that is not in some way promoted by them, and a vast portion of the wealth of the country is in their hands. It is, therefore, of the greatest interest to them whether their property is subject to the same rules of assessment and taxation as like property of natural persons, or whether elements which affect the valuation of property are to be omitted from consideration when it is owned by

them, and considered when it is owned by natural persons; and thus the valuation of property be made to vary, not according to its condition or use, but according to its ownership. The question is not whether the State may not claim for grants of privileges and franchises a fixed sum per year, or a percentage of earnings of a corporation—that is not controverted—*but whether it may prescribe rules for the valuation of property for taxation which will vary according as it is held by individuals or by corporations. The question is of transcendent importance, and it will come here and continue to come until it is authoritatively decided in harmony with the great constitutional amendment which insures to every person, whatever his position or association, the equal protection of the laws; and that necessarily implies freedom from the imposition of unequal burdens under the same conditions. Barbier* v. *Connolly*, 113 U. S., 27, 31."

In *County of San Mateo* v. *Southern Pac. R. Co.*, 13 F. R., 722, 737, 744, Mr. Justice FIELD said:

"It is no answer to this discrimination to say that property in the State may be divided into classes, and different rates prescribed for them. Undoubtedly property may be classified for purposes of taxation. Real property may be subjected to one rate of taxation; personal property to another rate. Property in particular districts may be taxed for local purposes, while property elsewhere may be exempt. Taxation on business in the form of licenses may also vary according to the calling or occupation licensed, and the extent of business transacted, but even then there must be uniformity of charges with respect to the same calling or occupation in the same locality. It is, however, only with the taxation of property that we are concerned in this case, and the whole object of classifying

property is that each class may be subjected to a special rate of taxation. There is no difference in the rate prescribed by the law of the state for the property of railroad corporations, and the rate prescribed for the property of individuals. There is only one rate for all property. There is, therefore, no case presented for the application of the doctrine of classification. The discrimination complained of arises from the different rule adopted in ascertaining the value of the property of railroad corporations as a basis for taxation, not from any different rate of taxation when the value is established. In all taxes upon property, whatever its form or nature, the property is taken as representing a pecuniary value; as standing for so much money invested. The tax is the rate per centum of this pecuniary value. The value being ascertained, the law fixes the rate. The ground of complaint here is that the law requires a higher value to be placed upon the defendant's property than upon the property of individuals similarly incumbered, or rather requires the assessor of the defendant's property, in estimating its value, to disregard and set aside certain elements materially affecting its amount, which are to be considered in estimating the value of the property of individuals. It is not classifying property to make this distinction in determining its value. It is not classifying property to provide that the property of certain parties, which has a mortgage upon it, shall be assessed at its value after deducting the mortgage; and that the property of other parties, also having a mortgage upon it, shall be taxed at its full value without any deduction. That is not providing for a different rate of taxation for different kinds of property, but for unequal taxation according to the character of the owner.

* * * *It would be a most singular result if a constitutional provision intended for the protection of every*

person against partial and discriminating legislation by the states, should cease to exert such protection the moment the person becomes a member of a corporation. We cannot accept such a conclusion. On the contrary, we think that it is well established by numerous adjudications of the supreme court of the United States and of the several states, that whenever a provision of the constitution, or of a law, guaranties to persons the enjoyment of property, or affords to them means for its protection, or prohibits legislation injuriously affecting it, the benefits of the provision extend to corporations, and that the courts will always look beyond the name of the artificial being to the individuals whom it represents."

In *County of Santa Clara* v. *Southern Pacific R. Co.*, 18 F. R., 385, 408, 409 (affirmed in 118 U. S., 394, but without passing upon the question of classification, &c.), Mr. Justice FIELD said:

"The discrimination between the railroad companies and individual proprietors, in the estimate of the value of their property, is made because of its ownership, and not from any specific differences in the character of the property, or in the specific uses to which it is applied. * * * *It is not classifying property to make a distinction of that character in estimating its value as a basis for taxation. It is making the amount of taxation depend, not upon the nature of the property or its use, but its ownership.* And if this can be done, there is no protection against unequal and oppressive taxation."

SAWYER, J., said, p. 429, *et seq.*:

"And when we come to the case of property, *as property*, to be affected by a tax, or any other imposition imposed upon it as a *thing* of *value*, a distinction cannot be made to depend

upon character, or occupation, or quality, or any individual characteristic of the citizen. To hold otherwise would be to set up the very essence of tyranny and arbitrary power. * * The *basis* of the imposition being *property as such*, the fact that certain property is owned by a corporation, or a white man, or man of bad character, or a clergyman, cannot be made the ground of a levy that, both in form, in fact, and in result, is unequal and injurious. Any other doctrine necessarily implies that the state may carry such unequal exactions to the end of complete confiscation by edict of all the property of any class or man, who, during the passion of the hour, may not be in the sunshine of popularity. * * Different kinds of property may require to be taxed in different forms and modes, in order to be equally taxed; and classifications of property for purposes of taxation should have reference to the just equality of burdens, so far as that is practically attainable. Classification should have reference to the different character, situation, and circumstances of the property, making a different form or mode of taxation proper, if not absolutely necessary. It cannot be arbitrarily made with mere reference to the nationality, color, or character of the owners, whether natural or artificial persons, without any reference to a difference in the character, situation, or circumstances of the property. * * A mere change of ownership, under the provision in question, largely affects the amount of taxes paid by the owner upon the same property, without any change in the character, condition, value, use, or circumstances of the property itself."

In *Northern Pacific R. Co.* v. *Walker*, 47 Fed. Rep., 681, 685, CALDWELL, C. J., said:

"In the matter of taxation there is no differ

ence between the lands owned by this company and lands owned by any other corporation or by a natural person. Lands, by whomsoever owned, are subject to taxation, and must be taxed by a uniform rule according to their value. This is the rule of the organic act, and it must be observed. But it is said the legislature, in the exercise of its powers to select the subjects of taxation and classify property for taxation, 'may place railroads in a class by themselves, and tax them and their property different from other persons; the only limitation being that all railroads in the same class must be taxed alike.' But, as before stated, conceding that under the organic act railroads may be classed by themselves for the purposes of taxation, and taxed by a method applicable to them alone, still that classification and method of taxation must be restricted to what is railroad property. It cannot be extended to lands which have no relation to the railroad, or its use or operation. The franchises of railroad companies, and their earnings, and railroad property as before defined, may well be classed by themselves for purposes of taxation, and taxed by a different method or rule from that applied to other property. This may be done, because it is unlike other property. It is the difference in the character, condition and use of this kind of property from other property that justifies the difference in classification and the mode of taxation. Property of the same kind, in the same condition, and used for the same purpose, must be taxed by a uniform rule without regard to its ownership. The Legislature, having selected land as a subject of taxation, all lands under the same conditions are subject to be taxed. The law for the taxation of lands must operate equally and uniformly upon all lands, the condition and use of which are similar. *While property may be classified for the purposes of taxation, between the subjects of tax-*

ation in the same class, there must be equality. Property of the same kind, and in the same condition, and used for the same purpose, cannot be divided into different classes for purposes of taxation, and taxed by a different rule, because it belongs to different owners."

The Income Tax Law of 1894 is, therefore, unconstitutional, because it imposes a greater burden upon the property and income of corporations than upon the property and income of individuals under precisely similar conditions.

IX.

CONGRESS HAS NO CONSTITUTIONAL AUTHORITY TO TAX INCOME DERIVED FROM STATE, COUNTY AND MUNICIPAL SECURITIES.

There can be no doubt that, in enacting the Income Tax Law of 1894, it was the deliberate intention of Congress to tax income derived from state, county and municipal securities. According to the census reports, these stocks and bonds amount to about the sum of $1,243,268,000, on which the income or interest exceeds the sum of $65,000,000 per annum. The annual tax of two per cent. upon this income or interest would be $1,300,000 (Record, fol. 13). It was clearly considered by the framers and advocates of the measure essential and necessary, in order to accomplish the purposes and general scope of the

legislation, that a tax should be laid upon income derived from these securities.

A motion was made in the House to exempt these securities, but it was defeated (see Cong. Rec., Vol. 26, Part 2, pp. 1733–7). When the measure came up for debate in the Senate an amendment was proposed exempting "the bonds of any state, county, municipality or town," and the most strenuous efforts were made to free state, county and municipal bonds from the operation of the act. The amendment was opposed specifically on the ground that these securities should be taxed and that it would not be unconstitutional to tax a citizen "upon that portion of his income derived from state bonds." The amendment was defeated by a vote of 30 to 25 (C. R., Vol. 26, Part 7, pp. 6620-6621, 6809–6810, 6811–6817). In view of the debates in Congress, there can be no doubt as to the *intention* of the majority to tax these securities.

Reference to the proceedings in the House and Senate in connection with this discussion is not had for the purpose of varying, limiting or narrowing the construction of the language of the act, but to advise the Court of the *intention* of Congress, in order that such intention shall indicate the scope and purpose of the enactment and the *subject* of taxation

sought to be reached thereby (*Holy Trinity Church* v. *United States*, 143 U. S., 457, 465; *Blake* v. *National Banks*, 23 Wall., 307, 319, 320; *Jennison* v. *Kirk*, 98 U. S., 453, 459; *United States* v. *Union Pacific R.R. Co.*, 91 U. S., 72, 79; *American Net & Twine Co.* v. *Worthington*, 141 U. S., 468, 473).

In both of the present cases, the question of taxation upon the income derived from municipal bonds is directly presented. The defendant the Farmers' Loan and Trust Company owns $2,000,000 of municipal bonds of the City of New York, from which it derives an annual income of $60,000 (Pollock Record, fols. 4–5); the Continental Trust Company holds $200,000 of the same bonds (Hyde Record, fol. 4). That the directors of the defendant trust companies intend to pay the tax upon the income derived from these municipal bonds is alleged by the bill and admitted by the demurrer (Pollock Record, fol. 14; Hyde Record, fol. 13). The blanks prepared and furnished by the Internal Revenue Department contain an item of exemption of United States securities, but none to cover state, county or municipal bonds; and the Department would have no power to concede such an exemption.

A municipal corporation is a representative of the State and a portion of its governmental

power. It is one of the instrumentalities of the State governments (*Commissioners* v. *Lucas*, 93 U. S., 108, 114). The property and revenues of municipal corporations are not subjects of Federal taxation (*Collector* v. *Day*, 11 Wall., 113, 124; *U. S.* v. *Railroad Company*, 17 Wall., 322, 327, 332). This is recognized in the provision of the present law (Sec. 32), viz.,

> "That nothing herein contained shall apply to States, counties or municipalities."

The theory of the majority in Congress was that although they could not tax the property or revenues of the States or their instrumentalities, they nevertheless could tax state, county and municipal securities as property in the hands of the holders thereof. The Court must, therefore, now decide whether or not Congress has the constitutional power to tax income derived from such securities.

The precise question as to the power of Congress to tax income derived from state, county and municipal bonds has never been decided; but the same principle which exempts income derived from United States stocks and bonds from State taxation would also exempt income from State stocks and bonds from takation by Congress, and denies the right in the Federal government to tax State securities (Cooley's Const. Lim., pp. 480, *et seq.*; Cooley on Taxation, pp. 85–86).

In *Weston* v. *Charleston*, 2 Peters, 449, 468, Chief-Justice MARSHALL, said:

> "The right to tax the contract to any extent, when made, must operate upon the power to borrow before it is exercised, and have a sensible influence on the contract. The extent of this influence depends on the will of a distinct government. To any extent, however inconsiderable, it is a burthen on the operations of government. It may be carried to an extent which shall arrest them entirely. * * * The tax on government stock is thought by this Court to be a tax on the contract, a tax on the power to borrow money on the credit of the United States, and consequently to be repugnant to the Constitution."

In *Collector* v. *Day*, 11 Wall., 113, 124, Mr. Justice NELSON said:

> "The general government, and the States, although both exist within the same territorial limits, are separate and distinct sovereignties, acting separately and independently of each other, within their respective spheres. The former in its appropriate sphere is supreme; but the States within the limits of their powers not granted, or, in the language of the Tenth Amendment, 'reserved,' are as independent of the general government as that government within its sphere is independent of the States."

In *U. S.* v. *Railroad Company*, 17 Wall., 322, 327–328, 328–329, 332, Mr. Justice HUNT said:

> "The power of taxation by the Federal government upon the subjects and in the manner prescribed by the act we are considering, is undoubted. There are, however, certain departments which are excepted from the general power. The right of the States to administer their own affairs through their legislative, executive, and judicial departments, in their own manner through their own agencies, is

conceded by the uniform decisions of this Court and by the practice of the Federal government from its organization. This carries with it an exemption of those agencies and instruments, from the taxing power of the Federal government. * * *

"A municipal corporation like the City of Baltimore, is a representative not only of the State, but is a portion of its governmental power. It is one of its creatures, made for a specific purpose, to exercise within a limited sphere the powers of the State. The State may withdraw these local powers of government at pleasure, and may, through its legislature or other appointed channels, govern the local territory as it governs the State at large. It may enlarge or contract its powers or destroy its existence. As a portion of the State in the exercise of a limited portion of the powers of the State, its revenues, like those of the State, are not subject to taxation. This proposition is very properly admitted by the counsel for the government. * * * The action is no less a portion of the sovereign authority, when it is done through the agency of a town or city corporation."

See also, *Wisconsin Co.* v. *Price County*, 133 U. S., 496, 504; *Van Brocklin* v. *State*, 117 U. S., 151, 178; *Ward* v. *Maryland*, 12 Wall., 418, 427; *Fifield* v. *Close*, 15 Mich., 505; *Jones* v. *Estate of Keep*, 19 Wisc., 369, 373; *Sayles* v. *Davis*, 22 Wisc., 225; *Union Bank* v. *Hill*, 3 Coldwell, 325; *Warren* v. *Paul*, 22 Indiana, 276; *State* v. *Garton*, 32 Indiana, 1, 4.

X.

THE WHOLE INCOME TAX LAW SHOULD BE DECLARED UNCONSTITUTIONAL BY REASON OF INVALIDITY OF ESSENTIAL AND INSEPARABLE PARTS.

If any of the objections above discussed are sustained by the Court, the Income Tax Law of August 28, 1894, must be declared unconstitutional as a whole. It was manifestly the intention of Congress to deny corporations and individuals having corporate investments any exemption whatever, to create illegal exceptions and to tax the income derived from state, county and municipal bonds. To insert by construction provisions of uniform exemption or to strike out the exceptions would be to make a new law. This is not within the judicial province. It would not be construction, but legislation, and decreeing as law what Congress should have done, although it deliberately refused so to do.

The debates show that Congress declined to grant the owners of corporate property, or the holders of state, county or municipal bonds, any exemption; and in view of this proof, the Court cannot attempt to sustain the act upon the assumption that Congress might

have adopted the law and the same rate of taxation with proper provisions for uniformity and exemption and without the exceptions granted to favored organizations. On the contrary, Congress clearly intended that the act should operate as a whole—as an entire system—and the whole act must fall with the invalidity of any of its provisions. An entirely different question might arise if the unconstitutional parts of the act related to distinct and separate subjects or provisions, which could be rejected without affecting the general scope and purpose of the law. (*Trade-Mark Cases*, 100 U. S., 82, 98; *U. S.* v. *Reese*, 92 U. S., 214, 221; *Huntington* v. *Worthen*, 120 U. S., 97, 101).

The authorities in this Court abundantly support the proposition that the whole of the income tax provisions must fall if any of the essential and inseparable parts are invalid (*Virginia Coupon Cases*, 114 U. S., 270, 304; *Baldwin* v. *Franks*, 120 U. S., 678, 685; *California* v. *Pacific R.R. Co.*, 127 U. S., 1, 45). If the exception of building and loan associations, savings banks and mutual insurance companies be unauthorized, the act must be declared unconstitutional by reason of the want of equality and uniformity thus resulting. These objections to

the act cannot be met by enforcing the law irrespective of the exemptions and exceptions and treating these as inoperative, because there would be no authority of law for collecting the tax from the corporations and associations which Congress has expressly excepted. To impose the tax on them by judicial construction would be to make a new law, and the Court cannot thus remodel an act of Congress (*Spraigue* v. *Thompson*, 118 U. S., 90, 94).

CONCLUSION.

The appellants, therefore, insist that the provisions as to income tax embodied in the Tariff Act of August 28th, 1894, are unconstitutional because—

I.—The taxes imposed thereby are direct taxes upon property and income and should have been apportioned among the States.

II.—If considered as in the nature of duties, imposts and excises, they are unconstitutional, because (*a*) unequal and partial; (*b*) not uniform throughout the United States; (*c*) in violation of the provisions of the Fifth Amendment, which prohibits the taking of private property without due process of law or for public use without just compensation.

III.—The law is also unconstitutional, because it attempts to impose a tax upon income derived from state, county and municipal bonds.

IV.—The whole law should be declared unconstitutional on the ground that essential and inseparable parts thereof are invalid.

The decrees should be reversed, and the causes remanded to the court below, to be proceeded with in conformity with the judgment of this Court declaring the law to be unconstitutional.

Washington, March 4, 1895.

JOSEPH H. CHOATE, WILLIAM D. GUTHRIE,
CLARENCE A. SEWARD, DAVID WILLCOX,
BENJAMIN H. BRISTOW, CHARLES STEELE,
Of Counsel for Appellants.

APPENDIX.

CONTAINING DECISIONS OF STATE COURTS UPON QUESTION OF UNIFORMITY IN TAXATION AND NECESSITY FOR JUST AND IMPARTIAL TAX LAWS.

In *Mayor* v. *Dargan*, 45 Ala., 310, 319, the constitution merely contained a provision that private properties could not be taken for public use without compensation. A levy for a local improvement was made by foot front instead of valuation of lots. The court held this was bad because unequal, and PETERS, J., delivering the opinion, said :

> "A tax is an orderly rate levied on the property of the citizen according to its value, or a fixed sum levied on his person, for the public use. And as it is for the use of all, it ought, in strict justice, to be levied on the property of all. Here the levy is not upon the property of all the citizens for a public purpose, but it is on the property of a few, for the public use—for the improvement of a public street. Most clearly, all taxes are intended to be as nearly equal as possible. If they are local, and for community or local purposes, the whole community is presumed to be interested in their appropriation; and for this reason all are required to contribute to supply them. A tax levied for national purposes, is levied upon the whole people of the nation; a tax levied for a State, falls on all its people; and in like manner, a tax levied for a county is paid by the whole people of the county. So must it be with a tax levied upon the people of a city or town, in order to make it just and equal. Such levies may include everything that may be called

property—everything that can be owned. Such taxes, to make them just, must be in proportion to the value of the property upon which the burden is imposed, and they must be levied upon all, and not upon a few only. This is said to be an inherent principle of all taxation. It is the limit that use affixes to the word. If this, then, is not a tax in the just and proper sense of that word, it is a seizure of the private property of the citizen for public use, without his consent, and without first making to the owner just compensation for the same. This the constitution of the State forbids."

In *Mayor* v. *Stonewall Ins. Company*, 53 Ala., 570, 580, 581, BRICKELL, C. J., said:

"If property of a particular kind is subjected to taxation, and owned by a corporation, it must bear the rate of taxation imposed on individuals. While the constitution inhibits the exemption or discrimination in favor of corporations, it equally inhibits a discrimination against them. Equality in bearing a common burthen, which is natural right and equity, is secured alike to the corporation and to the citizen." This was approved in Clark *vs.* Mobile, 67 Ala., 217.

In *Bureau Co.* v. *R.R. Co.*, 44 Ill., 229, the Court held (BREESE, J.):

That the rule of uniformity of taxation prescribed in the constitution required that one person should not be compelled to pay a greater proportion of the taxes according to the value of his property than another. So where the property belonging to individuals in a county has been assessed at less than its actual value, the constitutional rule of uniformity forbids that the property of a railroad company in such county should be assessed upon any greater per cent. of its value than that of individuals. "The great and attractive

feature of uniformity has been disregarded by the board and appellees victimized. It may be very desirable, that the greatest share of the public burdens shall be borne by these corporations, but until there be a radical change in our fundamental law it cannot be done. They stand on the platform of equality before the law, and no greater burden for the support of government can be imposed upon them than can be placed on the individual taxpayer" (p. 239).

In *Davis* v. *Litchfield*, 145 Ill., 313, 327, SHOPE, J., said:

"It is of the essence of a tax, that it shall be levied for a public purpose, and shall be uniform in respect of *persons* and property within the taxing district, whether that be the state, county, municipality, or district thereof, created for local improvement, and that it be laid according to some fixed rule of apportionment. 'Equality,' says MR. Desty (1 Desty on Tax., 29), 'in the imposition of the burden, is of the very essence of the right, and though absolute equality, and absolute justice, may not be attainable, the adoption of some rule tending to that end is indispensable. Equality, as far as practicable, and security of property against irresponsible power, are principles which underlie the power of taxation, as declared ends and principles of fundamental laws.' Dillon on Mun. Cor., 587, and notes. In the idea of a tax, it is inherent that it shall be upon some system of apportionment, securing practical uniformity among those subject to it.'"

In *Morford* v. *Unger*, 8 Iowa, 82, the question was whether it was competent for the legislature to extend the limits of a town to include property deriving no benefit from the municipal

government and to thus subject such property to the burdens of municipal taxation. The Court (STOCKTON, J.) held that this constituted not taxation, but a taking of private property for public use without compensation. It said (p. 91):

> "* * * The criterion is held to consist in the discrimination to be made, between what may reasonably be deemed a tax, for which a just compensation is provided in the objects to which it is to be devoted, and that which is palpably not a tax, but which, under the form of a tax, is the taking of private property for public use, without just compensation. If there be such a flagrant and palpable departure from equity, in the burden imposed; if it be imposed for the benefit of others, or for purposes in which those objecting have no interest, and are, therefore, not bound to contribute, it is no matter in what form the power is exercised—whether in the unequal levy of the tax, or in the regulation of the boundaries of the local government, which results in subjecting the party unjustly to local taxes, it must be regarded as coming within the prohibition of the constitution designed to protect private rights against aggression, however made, and whether under the color of recognized power or not.

In *Graham* v. *Commissioners*, 31 Kans., 473, the Constitution required uniformity in matters of taxation. It was held (BREWER, J.) that this required that if taxes were imposed upon personal property brought into the state after a certain date, they should be imposed upon all property of that class. It was not competent for the legislature to pick out a special kind of property which had been so brought in and tax that alone.

In *City of Covington* v. *Southgate*, 15 B. Monroe, 491, it is held (MARSHALL, C. J.) that imposing taxes to pay the expense of municipal government upon property which gets none of the benefits thereof, is taking private property for public purposes without compensation.

In *City of Lexington* v. *McQuillan's Heirs*, 9 Dana, Ky., 513, 517, the question was regarding the power of the legislature to pass an act permitting private property to be taken for local improvements at unequal rates. The Court said (ROBERTSON, C. J.):

> "The distinction between constitutional taxation, and the taking of private property for public use by legislative will, may not be definable with perfect precision. But we are clearly of the opinion that, whenever the property of a citizen shall be taken from him by the sovereign will, and appropriated, without his consent, to the benefit of the public, the exaction should not be considered as a tax, unless similar contributions be made by that public itself, or shall be exacted rather by the same public will, from such constituent members of the same community generally, as own the same kind of property. Taxation and representation go together. And representative responsibility is one of the chief conservative principles of our form of government. When taxes are levied, therefore, they must be imposed on the public in whose name and for whose benefit they are required, and to whom those who impose them are responsible. And although there may be a discrimination in the subjects of taxation, still persons in the same class, and property of the same kind, must generally be subjected alike to the same com-

mon burden. This alone is *taxation*, according to our notion of constitutional taxation in Kentucky. And this idea, fortified by the spirit of our constitution, is, in our judgment, confirmed by so much of the 12th section of the 10th article as declares, 'Nor shall any man's property be taken or applied to public use without the consent of his representatives, and without just compensation being previously made to him'" (pp. 517, 518).

In *Brewer Brick Co.* v. *Brewer*, 62 Maine, 62, the constitution provided that all taxes upon *real* estate should be apportioned and assessed equally according to the just value thereof. The Court held (APPLETON, C. J.) that this did not imply that personal estate might be taxed unequally and that an act exempting a manufactory from taxation was invalid.

"To have uniformity of taxation, the imposition of, and the exemption from taxation, must be by one and the same authority—that of the legislature. It is for the legislature to determine upon what subject matter taxation shall be imposed; upon land, upon loans, upon stock, etc.; but the subject matter once fixed, the rule is general, and applies to all property within its provisions. So it may relieve certain species of property from taxation, as the tools of the laborer, the churches of religious societies, etc.; but upon the non-exempted estate the taxation must be uniform as the exemptions are uniform (p. 74). * * It can never be admitted that the constitution of this state permits or allows the taxation of a portion of its citizens for the private benefit of a chosen few, and that the taxes raised for such a purpose shall be assessed without reference to uniformity of taxable property, or equality of ratio" (p. 76).

To the same effect is *Dyar* v. *Village*, 70 Me., 515, 524.

In *State* v. *Cumberland Co.*, 40 Md., 22, the bill of rights provided that "every person of the state, or person holding property therein, ought to contribute his proportion of public taxes for the support of the government according to his actual worth in real or personal property." Under this a tax of two cents per ton upon coal transported out of the State was held unconstitutional. ALVEY, J., said (p. 51):

> "It is not assessed with reference to any uniform value of the coal, nor with reference and in conformity to any rate of taxation imposed upon the other property of the state. It is therefore a specific, arbitrary tax levied for the support of the government, on a part of the personal property of the state, without regard to value, uniformity or equality."

In *Northampton* v. *Commissioners*, 145 Mass., 108, where the Constitution provided that taxation should be proportional and reasonable, DEVENS, J., said (p. 109):

> "If the Legislature should arbitrarily designate a certain class of persons on whom, or a certain class of property on which, a tax was to be imposed, without reference to any rule of proportion, or without regard to the share of the public charge which either should bear relatively to that borne by other persons or property, or without regard to any special benefit which might accrue to the property subjected to the tax, such imposition would be unlawful."

In *Standard Insurance Co.* v. *Assessors*, 95 Mich., 466, the Constitution required that the legislature should provide a uniform rate of taxation, except on personal property paying specific taxes. A statute provided that in taxing personal property real estate mortgages in general should be deducted, but that no such deduction should be made in the case of real estate mortgages owned by banks and insurance companies. This statute was held (MONTGOMERY, J.) to be unconstitutional, as being in conflict with the above provision.

In *Murray* v. *Lehman*, 61 Miss., 283, the Constitution provided that taxation should be equal and uniform throughout the State. It was held (CAMPBELL, C. J.) that this rendered invalid a statute imposing a tax consisting of a docket fee in only one county of the State. The rule of uniformity "requires that persons in the same class and property and rights of the same kind shall generally be subjected alike to the same common burden. There must not be local exactions except for peculiar local advantage."

In *Tide Water Co.* v. *Coster*, 18 N. J. Eq., 518, a statute provided for draining of large tracts of meadow land, the property of various individuals, and commissioners were authorized to assess upon the lands when reclaimed a just proportion

of the contract price. It was held (BEASLEY, C. J.), that the scheme was illegal and void, inasmuch as the expense to be levied on the land was not limited in amount to the extent of the benefit to be conferred; to compel the owner of private property to bear the expense of an improvement, except to the extent of his particular advantage, is, *pro tanto*, to take private property for public use without compensation.

> "The consideration for the excess of the cost of the improvement over the enhancement of the property, within the operation of this act, is the public benefit; how, then, upon any principle of taxation, can this portion of the expense be thrown exclusively upon certain individuals? The expenditure of this portion of the cost of the work can only be justified on the ground of benefit to the public. I am aware of no principle which will permit the expenses incurred in conferring such benefit upon the public, to be laid in the form of a tax upon certain persons, who are designated, not indeed by name, but by their description as the owners of certain lands. A legislative act, authorizing the building of a public bridge, and directing the expenses to be assessed on A, B, and C, such persons not being in any way peculiarly benefited by such structure, would not be an act of taxation, but a condemnation of so much of the money of the persons designated to a public use. And, precisely in the same way, would an exaction of the cost of these works embraced in the act before us, so far as such cost exceeded the benefit to the lands improved, be an assumption of the money of a few individuals for an end purely public (p. 528) * * * Every consideration of equity stands opposed to the admission

of such a rule of taxation (p. 528). * * * This principle is one of great importance; for if the burthens of the community can be thrown upon a small class, whose position is not peculiar or different from that of the rest of the people, there can be no security for private possessions. To permit individuals to be taxed to pay for a public improvement, to the extent of the peculiar benefits which they receive from such improvement, is not unjust or inequitable; but any exaction beyond this, exclusively from such individuals, is an act which involves the ability, on the part of the community, to confiscate, for its own purposes, the property of the citizen. Such power has not, by the constitution of this state, been placed in the hands of the legislature; and as the act in question has, in the particular adverted to, exercised such power, it is in my opinion void" (p. 531).

In *State* v. *Township of Readington*, 36 N. J. L., 66, DEPUE, J., said (p. 70):

"A tax upon the persons or property of A, B and C individually, whether designated by name or in any other way, which is in excess of an equal apportionment among the persons or property of the class of persons or kind of property subject to the taxation, is, to the extent of such excess, the taking of private property for a public use without compensation. The process is one of confiscation and not of taxation."

In *State* v. *Mayor of Newark*, 37 N. J. Law, 415, 421, BEASLEY, C. J., said:

"I think it impossible to assert, with the least show of reason, that the legislative right to select the subject of taxation, is not a limited right. * * * If such prerogative has no trammel or circumscription, then it follows that the entire burthen of one of these public improvements can be

placed, by the force of the legislative will, on the property of a few enumerated citizens, or even on that of a single citizen. In a government in which the legislative power is not omnipotent, and in which it is a fundamental axiom that private property cannot be taken without just compensation, the existence of an unlimited right in the law-making power to concentrate the burthen of a tax upon specified property, does not exist. * * * If this cannot be maintained, then it follows that it is conceded that the legislative power in question is not completely arbitrary. It has its limit; and the only inquiry is, where that limit is to be placed."

In *State Board of Assessors* v. *Central R.R. Co.*, 48 N. J. Law, 146, the Constitution provided that property should be assessed for taxes under general laws and by uniform rules, according to its true value. The question was regarding the constitutionality of an act providing for taxation of railroad property by a state board of assessors. The Court said:

"The constitutional provision does not take away from the legislature the power of selecting the subjects of taxation. But it does require that all the members of the class selected shall be included in the taxing law, and that the rule applied thereto shall be uniform as to the whole of the class" (p. 279). "The rules for taxation must be uniform as to the property in the class on which it operates. As to railroad property, all property in that class must be assessed for taxes by the same rules" (p. 291). "The uniformity of rules in taxation which the constitution requires is that uniformity which operates on the whole of a class. A tax upon property of railway corporations should be governed

by uniform rules as to the property of all such companies used for railroad purposes " (p. 304).

In the dissenting opinion of DEPUE, J., the following language was used :

" When a class of persons or things is selected for taxation, the tax must be imposed upon individuals of the class under a rule of uniformity. * * * (p. 335). But with the selection of the property to be taxed, the power of the legislature to discriminate ends. The rule of uniformity prescribed for taxation prevents property from being classified, and taxed as classed, by different rules" (p. 337).

In *State* v. *Express Co.*, 60 N. H., 219, 252, a statute provided that every railroad expressman was required to pay annually to the state for a license, either two per cent. of the gross receipts of his business or five dollars per mile. The Court said (DOE, J.) :

" To the extent of its inequality, a disproportional division of public expense is an uncompensated and unauthorized transfer of private property, for a private purpose, from those who bear more than their shares of the common burden to those who bear less than their shares (Morrison *v.* Manchester, 58 N. H., 538, 550.) * * * As a taxation of such expressmen, it makes an unequal division of public expense, and binds them to the private service of paying their neighbors' shares. Expressmen are subject, by general law, to the uniform taxation of the whole community. In addition to that, this special law puts upon railroad expressmen a tax which is put upon nobody else. Whether it is a tax imposed upon persons, property, income, business, gross receipts, profits, or earnings, is immaterial. It is a tax which one class of men are required to pay, and from which all others are ex-

> empt. It is a perfect example of unequal division of public expense. It does not tend towards equal right by any degree of approximation, but is as distant as possible from it, and diametrically opposite to it. It is inequality pure and simple. * * * If a special, discriminating tax of two per cent. could be taken from one class of men alone, a similar tax of one hundred per cent. could be taken from any man, any family, or any class of men; one man, one family, or one class could be singled out, and compelled to pay all the expense of the common benefits of government, and all others could thus be discharged from their constitutional obligation to contribute their shares" (p. 263).

To similar effect is *Curry* v. *Spencer*, 61 N. H., 624.

In *Gatlin* v. *Town*, 78 N. C., 119, 121, the constitution provided that the legislature should tax by a uniform rule all property, and that it might also tax trades, &c., RODMAN, J., said:

> "Although it is not expressly provided that the tax on trades, &c., shall be uniform, yet a tax not uniform, as properly understood, would be so inconsistent with natural justice, and with the intent which is apparent in the section of the constitution which is above cited, that it may be admitted that the collection of such a tax would be restricted as unconstitutional. * * A tax on trades, &c., must be considered uniform when it is equal upon all persons belonging to the described class upon which it is imposed."

In *Durach's Appeal*, 62 Pa. St., 491, 494, SHARSWOOD, J., said:

> "There is no limitation of the power of taxation by municipal governments expressed in the constitution of Pennsylvania as there is in the constitutions

> of some of our sister States; but, nevertheless, there are limits *in the nature of things. The Legislature cannot, under the name of taxation, take private property for public use without making compensation, and a special tax levied upon an individual, or upon particular individuals, would infringe this restriction.* * * * But in the legitimate exercise of the power of taxation, persons and things always have been and may constitutionally be classified. * * * If the taxation is upon all of a class, either of persons or things, it matters not whether those included in it be one or many, or whether they reside in any particular locality or are scattered all over the state."

In *Kitty Roup's case*, 81 Pa. St., 211, the Supreme Court of Pennsylvania held that a constitutional provision that "all taxes should be uniform upon the same class of subjects" is merely declaratory of the common law.

In *Fox's Appeal*, 112 Pa. St., 337, 353, the constitution provided that all taxes should be uniform upon the same class of subjects. The Court (PAXSON, J.) said:

> "The power of the state is conceded to select its subjects of taxation. It may tax mortgages or it may omit to tax them. It may tax horses or it may omit to tax them. But this tax, upon whatever laid, must be uniform. Thus it must be laid upon all taxpayers alike. It cannot tax A on his mortgages or his horses, and exempt B from a like tax. Nor do I see any distinction here between natural persons and artificial persons, commonly called corporations. Each must bear its due share of the public burdens. This is because the constitution declares that 'all taxes shall be uniform.'"

In *McBean* v. *Chandler*, 9 Heisk., Tenn., 349,

356, the Court (FREEMAN, J.) cites with approval Judge Cooley's statement of the rule that the general feature of taxation or of a public burden that may be imposed as such is that:

> "The tax must be laid according to some rule of apportionment—not arbitrarily or by caprice, but so that the burden may be made to fall with something like impartiality upon the persons or property upon which it justly and equitably should rest. * * Equality is of the very essence of the power itself, and though absolute equality and absolute justice are never attainable, some rule tending to that end is indispensable (People *vs.* Board, Cooley, J., 9 Am. Law Reg., 488)."

In *Norris* v. *City of Waco*, 57 Texas, 635, 641, the constitution required that taxes should be equal and uniform within the meaning of the constitution, and the Court said (STAYTON, J.):

> "Taxes are said, within the meaning of the constitution, to be equal and uniform, when no person nor class of persons in the taxing district, whether a state, county, or other municipal corporation, is taxed at a rate different than are other persons in the same district upon the same value or the same thing, and where the objects of taxation are the same by whomsoever owned, or whatever they be" (p. 641).